THE

PRACTICE

OF

POOR REMOVALS,

As regulated by the recent Statutes,

9 & 10 VICT. C. 66,

"An Act to amend the Laws relating to the Removal of the Poor,"

AND

11 & 12 VICT. C. 31,

"An Act to amend the Procedure in respect of Orders for the Removal of the Poor in England and Wales, and Appeals therefrom,"

WITH

OBSERVATIONS, FORMS, AND ALL THE CASES DECIDED TO THE END OF TRINITY TERM, 1849.

BY

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PREFACE

TO THE SECOND EDITION.

THE call for a Second Edition of this little Treatise has enabled the writer to introduce every Case that has been decided upon the construction of the Statutes by which Poor Removals are now regulated.

He has still deemed it desirable to adhere strictly to a practical description of the law *as it is*, without perplexing his readers by any reference to the law *as it was;* and he is gratified to find that his plan has received the approval of the Profession. Hence the brevity of this volume upon a subject which, in former days, has filled ponderous tomes.

EDWARD W. COX.

3, CROWN-OFFICE ROW, TEMPLE,
1*st October*, 1849.

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OF

POOR REMOVALS.

PREVIOUSLY to presenting the recent statutes relating to Poor Removals, it will be convenient briefly to describe so much of the law and practice of removal contained in the previous statutes as still continues in force.

ORIGIN OF REMOVALS.

The practice of removal is founded upon stat. 13 & 14 Car. 2, c. 12, which enacted that "it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of 10*l.*, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons, that are likely to be chargeable to the parish, shall come to inhabit, by their warrant to remove and convey such person to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant."

Stat. 35 Geo. 3, c. 101, s. 1, repealed so much of the above statute as enabled justices to remove any person or persons *likely to be chargeable*, and enacted

Origin of Removals.

that no poor person should be removed "by virtue of any order of removal from the parish or place where such poor person shall be inhabiting, to the place of his or her last legal settlement, until such person *shall have become actually chargeable* to the parish, township, or place in which such person shall then inhabit: in which case two justices of the peace are hereby empowered to remove the said person or persons, in the same manner, and subject to the same appeal, and with the same powers, as might have been done before the passing of this act with respect to persons likely to become chargeable."

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A person *actually chargeable*, and who has *come to inhabit*, may be removed.

Chargeability.

Chargeability.—A man who, having furniture of some value, applied, in temporary distress, to the overseers for relief, and received it, was held to be actually chargeable, although his property, if sold, would have been sufficient to maintain him: (*R.* v. *Ampthill*, 2 B. & C. 847.)

A wife becoming chargeable in her husband's absence may be removed to the place of his last legal settlement, if he have one, or, if that cannot be found, to the place of her maiden settlement: (*R.* v. *Harberton*, 13 East, 311.) But a woman living with her husband, who has a settlement, cannot be removed alone, so as to separate her from him: (*St. Michael's, Bath*, v. *Nunney*, 1 Str. 544; *R.* v. *Cuckfield*, Burr. S. C. 290.) And even where he has no settlement, and his wife becomes chargeable, she cannot, without his consent, be removed to her maiden settlement.

So a child cannot be removed from its parent during the age of nurture (seven years); up to that time it must remain with the parent, or follow his or her settlement, and be removed with its parent: (*Skiffreth* v. *Walford*, 2 Sess. Cas. 89; *R.* v. *Saxmundham*, Fort. 307.) Where a widow, having a child under the age of seven, married again, it was held that the child must go with her for nurture, but that it must be maintained by the parish in which the father was last legally settled previously to his death: (*R.* v. *Saxmundham*, Fort. 307.) This is now by the Removals Act, 9 & 10 Vict. c. 66, extended to the age of sixteen.

A man marrying a woman having children, legitimate or illegitimate, is by stat. 4 & 5 Will. 4, c. 76, s. 57, rendered liable for their maintenance as part of his family, until they arrive at the age of *sixteen*, or the death of their mother. But they are not thereby rendered irremovable. If they become chargeable they may be removed to their place of settlement, as if their mother were not married; and it is for that parish to enforce the claim against the step-father, under the provisions of the statute: (*R.* v. *Wendrop*, 7 Ad. & El. 819; *R.* v. *Stafford*, M. S. T. 1829, S. P.) In the case of a child residing with its mother for nurture becoming chargeable, it is the duty of the parish in which it resides to relieve it, and to obtain from the justices an order for reimbursement upon the parish in which the child is settled: (*Shermanbury* v. *Bolney*, Carth. 279.) WHO MAY BE REMOVED.

Casual Poor.—These are not removable while necessarily detained in the parish by illness or accident. No person can be the subject of an order of removal but one who comes *to settle in the removing parish*: (*R.* v. *St. Lawrence, Ludlow*, 4 B. & A. 660.) Casual poor.

IRREMOVABILITY BY FIVE YEARS' RESIDENCE.

This was introduced by stat. 9 & 10 Vict. c. 66, intituled *An Act to amend the Laws relating to the Removal of the Poor*, explained by a subsequent stat. 11 & 12 Vict. c. 111, intituled *An Act to amend an Act of the Tenth Year of Her present Majesty for amending the Laws relating to the Removal of the Poor*. The *purpose* of this statute was to prevent the removal of a pauper from a parish in which he may have resided uninterruptedly for five years. The 1st section is as follows:— Irremovability by five years' residence.

FIRST SECTION.

1. Whereas it is expedient that the laws relating to the removal of the poor should be amended: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, 9 & 10 VICT. c. 66.

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11 & 12 VICT. c. 66.

No person to be removed from any parish in which he or she shall have resided for five years.

Time during which persons are serving in the army or navy, &c. not to be computed as time of residence.

and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act no person shall be removed, nor shall any warrant be granted for the removal of any person, from any parish in which such person shall have resided for five years next before the application for the warrant: provided always, that the time during which such person shall be a prisoner in a prison, or shall be serving Her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or shall be confined in a lunatic asylum, or house duly licensed or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, shall for all purposes be excluded in the computation of time hereinbefore mentioned, and that the removal of a pauper lunatic to a lunatic asylum, under the provisions of any act relating to the maintenance and care of pauper lunatics, shall not be deemed a removal within the meaning of this act: provided always, that whenever any person shall have a wife or children having no other settlement than his or her own, such wife and children shall be removable whenever he or she is removable, and shall not be removable when he or she is not removable.

But some doubts existing as to the meaning of the proviso at the end of this section, an attempt was made to remove them by an Amendment Act, 11 & 12 Vict. c. 111, which is as follows :—

11 & 12 VICT. c. 111.

1. Whereas by an act passed in the tenth year of the reign of Her Majesty, intituled *An Act to amend the Laws relating to the Remo-*

val of the Poor, after reciting that it was expedient that the laws relating to the removal of the poor should be amended, it was enacted, that from and after the passing of that act no person should be removed nor should any warrant be granted for the removal of any person from any parish in which such person should have resided for five years next before the application for the warrant: provided always, that the time during which such person should be a prisoner in a prison, or should be serving Her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or should be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person should receive relief from any parish, or should be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, should for all purposes be excluded in the computation of time therein-before mentioned, and that the removal of a pauper lunatic to a lunatic asylum under the provisions of any act relating to the maintenance and care of pauper lunatics should not be deemed a removal within the meaning of that act: provided always, that whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable whenever he or she is removable, and should not be removable when he or she is not removable: And whereas by reason of the generality of the expressions used in the last proviso doubts are entertained as to the meaning thereof, and it is desirable to remove such doubts: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this

WHO MAY BE REMOVED.

11 & 12 VICT. c. 111.

WHO MAY BE REMOVED.

11 & 12 VICT. c. 111.

Repealing proviso in 9 & 10 Vict. c. 66, in relation to removal of wives and children, and substituting another proviso in lieu thereof.

present Parliament assembled, and by the authority of the same, that the said last proviso be repealed, and that instead thereof the following be enacted: provided always, that whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable, notwithstanding any provisions of the said recited act, and should not be removable from any parish or place from which he or she would not be removable by reason of any provision in the said recited act.

Not to affect appeals of which notice has been given.

2. And be it enacted, that nothing herein contained shall affect any appeal of which notice shall have been given before the passing of this act.

Numerous questions have already arisen upon the construction of these statutes, and we proceed now to notice them in their order.

Statute retrospective.

1. *The Statute is retrospective.*—It was for some time a question whether the provisions of the statute were *retrospective*, the opinion of the law officers of the Crown being formally given that they were *not* so. But the Court of Queen's Bench has since decided that they *are* retrospective, in the case of *Reg.* v. *Christchurch* (3 Bit. & Par. New Mag. Cas. 63), the judgment in which case will be found at length, *post*, p. 16.

2. *It applies where the order was made before the passing of the statute, and was valid when made, but the pauper had become irremovable by the completion of his five years' residence before the appeal was heard.* —This was so decided in the case of *Reg.* v. *Glossop* (3 Bit. & Par. New Mag. Cas. 4.) The court in giving judgment said:—

Reg. v. *Glossop.*

"A question was raised whether the statute created a ground of appeal against an order of removal made before the statute, and valid at the time it was made, by reason that the pauper had become irremovable before the time the appeal was heard; and we

think the question ought to be answered in the negative. The appeal was given by the 13 & 14 Car. 2, to any person aggrieved by the judgment of two justices. Now, the order affords no grievance, having been valid when made, and not having been acted upon by removal since the statute has taken away the power to remove; and as the statute provides, both that no person shall be removed, and also that a warrant shall be applied for, it appears to us that effect can only be given to both clauses by deciding that a pauper may become irremovable although a valid order is in existence. The sessions, therefore, did right in confirming the order; but as the order is not to be acted upon, and the only use of their confirmation is as evidence of the settlement in case the question should arise hereafter, and as the circumstances are peculiar, we would suggest that an entry of the judgment be made thus: 'Order confirmed, although the pauper has since it was made become irremovable;' and that will explain the matter in any case in which it may be necessary hereafter to refer to it. The order of sessions is confirmed."

Who may be removed.

3. "*No person shall be removed,*" *&c.*—The term "*person*" here is general and applies to both sexes, and to every condition, and probably to natives of Ireland, Scotland and the Channel Islands, who are thus rendered irremovable by such residence as the act requires.

And residence as a wife will coalesce with residence as a widow so as to make up the five years: (*Reg.* v. *Glossop*, 3 Bit. & Par. New Mag. Cas. 4.)

4. "*From any Parish,*" *&c.*—It has been determined in *Reg.* v. *Fawncett St. Mary* (3 Bit. & Par. New Mag. Cas. 129), that the word "parish" in this section includes any "city maintaining its own poor" by stat. 4 & 5 Will. 4, c. 76, s. 109, and that a residence of five years in a city so maintaining its own poor out of a common fund, but consisting of several parishes, is sufficient to render the pauper irremovable, although during such five years he may have resided partly in one parish and partly in another. In other words, such a city forms one parish in contemplation of law for the purpose of this act. "We must read the clause in question," said Lord DENMAN, C. J., in giving judgment, "as if the word *city* were substituted for parish."

Parish.

Reg. v. *Fawncett St. Mary.*

5. "*Shall have resided for five years next before the application for the warrant.*"—The first question that arises upon this is, what constitutes *residence?* It

Residence.

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is a term whose signification varies in various statutes, and the question has usually arisen under the election statutes. We venture to suggest that it is synonimous with the term "*abode*," which signifies the place in which a person is with the intention of remaining as his home. If there be a purpose to stay there only for an interval and then to go to some other place to abide, the party is a visitor and not a resident. If a man has a family, his residence is where they dwell, even although he may be living and sleeping elsewhere, for he is presumed to have the *animus revertendi*. Thus in the case of *Whithorne* app. v. *Thomas* resp. (7 Man. & Gr. 5), where the question was raised as to the meaning of the term "residence" in the Reform Act, it was remarked by ERLE, J., that "the fact of sleeping in a place by no means constitutes a residence, though, on the other hand, it may not be necessary for the purpose of constituting a residence in any place to sleep there at all. If a man's family are living in a borough, and he is absent for six months, but with the intention of returning, he will still be considered as residing there."

But this is only a presumption of law which may be rebutted by evidence. A man may reside in one place while his family are living in another. Thus, a man in a prison resides where the prison is, and not where his home is, the reason of which is probably that he is not supposed to have an *animus revertendi* when he cannot return at any time, if he desires it. (*Reg.* v. *Salford*, 3 Bit. & Par. New Mag. Cas. 5.)

So a man may have two or more residences, as where he has a town house and country house, living occasionally at either. In the case of *R.* v. *North Curry* (4 B. & C. 953), BAILEY, J., said "The question is, what is the meaning of the word '*resides?*' I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks and sleeps, *or*, where his family or his servants eat, drink and sleep."

"The word *residence* must be read in the sense of a man's *home*," per POLLOCK, C. B. "It means domicile or home." PARKE, B. (*Lambe* v. *Smythe*, 15 L. J. (N.S.) 267, Ex.

Residence for five years.

6. *Residence for five years.*—This residence must be

unbroken, except by the circumstances presently to be mentioned. Any breach of residence during the five years destroys the irremovability of the pauper, and it is therefore always an important matter for parishes to ascertain, before they submit to maintain a pauper under the provisions of this statute, whether, *at any time* during the period of five years, he had done any act which would constitute a breach of his residence. WHO MAY BE REMOVED.

Exceptions.—But the following is expressly excepted by the above act from being a breach of residence:— Exception in case of pauper lunatics.

> The removal of a pauper lunatic to a lunatic asylum, under the provisions of any act relating to the maintenance and care of pauper lunatics.

In the first edition of this little treatise the author had contended that the periods which the statute had decided to be excluded from the computation of time "for all purposes," should be treated as among the exceptions to the breaches of residence. The Court of Queen's Bench has since decided otherwise, and although the author's opinion remains unshaken as to the proper construction of the statute, it would not be becoming to repeat the argument now that the point is settled.

But in the last session of Parliament the Legislature has interfered partially to restore the construction which was its obvious intention, and has now by express enactment declared that removal of a pauper lunatic to a *lunatic* asylum, or of a pauper to a *workhouse in the same union, other than by an order of removal*, shall NOT be deemed a disruption of residence, but that such period shall be excepted from the computation of time in calculating the five years. This provision is slipped into a sort of miscellaneous statute (12 & 13 Vict. c. 103,) which purports by its title to be an act for continuing an act of the previous session relating to the charge of pauper maintenance in certain cases. It runs thus—

12 & 13 VICT. c. 103, s. 4.

4. And be it enacted, that the removal of any lunatic pauper to an asylum, licensed house, or registered hospital, under the authority of the statutes in that behalf, or of any pauper, otherwise than under an order of removal, from his place of Removal of a lunatic to an asylum or of a pauper to a workhouse of

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the union not to be deemed an interruption of the residence under 9 & 10 Vict. c. 66, but the time to be excluded from computation.

abode in any parish of a union to the workhouse of such union, shall not be deemed to be an interruption of the residence of such pauper within the meaning of the statute of the tenth year of the reign of Her Majesty, intituled *An Act to amend the Laws relating to the Removal of the Poor*, but the time spent in such lunatic asylum, licensed house, or registered hospital or workhouse respectively, and the time during which any person shall be relieved at the charge of the common fund of the union, shall be wholly excluded from the computation of the time of residence which, according to the provisions of such statute, will exempt a poor person from being removed.

Breach of residence.

Disruption of Residence.—Rejecting the interpretation that the circumstances described in the proviso are *exceptions* from the required residence of five years, the Court of Queen's Bench has held them, notwithstanding the provisoes, to be *breaches* of residence. Thus—

Imprisonment.

Reg. v. *Salford.*

Imprisonment in another parish after conviction was held to be a breach of residence in *Reg.* v. *Salford* (3 Bit. & Par. New Mag. Cas. 5.) There the pauper had been imprisoned in another parish for fifteen months during the five years preceding the date of the order. He was held to be removable. But it should be observed, that although this decision appeared in all the reports as a decision that imprisonment generally was a breach of residence, the editor of the *Law Times* was subsequently requested to inform the profession that the court did not intend more by this particular judgment than to determine that imprisonment *after conviction* was a breach of residence. The judges reserved their opinion upon the point, whether such would be the consequence of imprisonment *before conviction*. And indeed there is a great difference in principle between the two cases, for after conviction a man cannot return to his home if he desires to do so, and therefore cannot have the *animus revertendi*, which prevents a temporary absence from being a breach of residence. But a prisoner committed for trial may be bailed, and as he

thus has some control over his own liberty, it may be fairly argued that, having the power to return, he may have the *animus* also. See also *Reg.* v. *Pott Shrigley* (3 Bit. & Par. New Mag. Cas. 64.) WHO MAY BE REMOVED.

A Removal under an Order of Removal has been held to be a Breach of Residence.—This was decided in the case of *Reg.* v. *Inhabitants of Halifax* (3 Bit. & Par. New Mag. Cas. 6.) There a pauper, after the death of her husband, was removed, under a former order of removal, from Halifax to Alnwick. She remained at Alnwick about nineteen days, receiving relief during the whole time; she then returned to Halifax, Alnwick paying her expenses and continuing to relieve her there after her return. She had rented a cottage in Halifax, and upon her removal to Alnwick under the order, she locked it up, and leaving her furniture there, took away the key, and she stated that it was always her intention to return there. But this was held to be a breach of residence. Lord DENMAN, C. J., in delivering the judgment of the court, said,— Under order of removal. *Reg.* v. *Halifax.*

"It appeared, that in respect of the residence for five years, the pauper had been, in March, 1845, under an order of removal, removed from Halifax to the appellant parish, and had remained in that parish nineteen days, and had then returned to Halifax. She had been renting a cottage before her removal, the key of which she had kept, and she left her furniture therein when she was removed from Halifax, and had always a desire for returning to her dwelling, though she resided in Alnwick more than nineteen days after the beginning of the five years now in question. The sessions decided that she had become irremovable, and discharged the order; and we are of opinion that the sessions came to a wrong conclusion. We take it to be clear, as a general proposition, that removal puts an end to residence. A review of the statutes under which the power of removal has been exercised, from the 13 & 14 Car. 2, downwards, conclusively shows that a pauper was originally considered an intruder on the inhabitants, and that the power of removal was given to prevent him becoming an inhabitant: a removal therefore is in its nature a disruption of residence and inhabitancy, and that being the general principle, do the facts stated with respect to the cottage and the desire to return constitute an exception? We think not. The right to return was taken away by the statement of chargeability; and the desire to return without the right, is very different from the *animus revertendi* which in some cases keeps up a continuity of residence. The facts relating to the cottage are not stated

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with precision; the possession of the property does not constitute, with the chargeability, an exception to the general principle, unless the ground of the exception can be stated with more precision than is to be collected from these facts. Therefore the order of sessions is quashed, and the original order remains."

Reg. v. *Seend.*

The same point was still more emphatically determined in the case of *Reg.* v. *Inhabitants of Seend* (3 Bit. & Par. New Mag. Cas. 59.) There the pauper, at the time of the removal, was occupying a cottage with her children in Seend. She was removed to Camerton, under an order, but on her departure she left her daughter in charge of the house and furniture, and on her arrival at Camerton she would not go to the union house, but went to her sister-in-law, who resided there, and the children under age who were removed with her did not sleep in Camerton at all, but returned to Seend the same day. After staying seven days with her sister-in-law the pauper returned to her house at Seend, and continued there in occupation of it. The court held that this case was governed by *Reg.* v. *Halifax* (*supra*). "The removal to another parish made the residence there, for ever so short a time, inconsistent with residence in the removing parish. The *animus revertendi*, if it exists, is in such case subject to the permission of the parish officers of that or any other parish." Lord DENMAN, C. J.

What is *not* a breach of residence.

What is NOT *a Disruption of Residence.*—Two or three cases have been decided that help to the determination of this not very difficult question. It has been observed before (p. 8) that residence was to be determined chiefly by reference to *animus;* a man may be personally in a place and not resident, and absent from it bodily and yet resident there. The case of *Reg.* v. *Tacolnestone* (3 Bit. & Par. New Mag. Cas. 78), has applied the rule to a particular state of facts which will serve to illustrate it. There the pauper, a weaver, had occupied, with his family, two rooms in parish A., which he hired by the quarter. Being out of work, he went to parish B., where he was settled, and obtained work there for six weeks, during which time he resided in the workhouse at B. At the expiration of six weeks he returned to his former lodgings at A., where his family had continued

Reg. v. *Tacolnestone.*

to reside, and where, during his absence, they had been maintained upon the profits of his labour in B. This was held *not* to be a breach of residence, because there was an *animus revertendi*, and ERLE, J., remarked, "The question of residence, in cases of this description, may almost always be determined by ascertaining whether or not there was an *animus revertendi*." WHO MAY BE REMOVED.

But there must be *a right* as well as *an intention* to return, or the breach of residence will be complete. Thus, in *Reg.* v. *Barnsley* (3 Bit. & Par. New Mag. Cas. 149), an order had been made, in 1842, for the removal of the father, the mother, and an idiot son; but the execution of it was suspended, and it was not acted on until 1844. There was no appeal against that order; and therefore it was taken to be conclusive of the facts stated in it. The residence then was *de facto* broken; that was admitted; but the circumstances relied upon to get rid of the effect of that admission were the retention of the house in the removing parish, the continuing intention to return, the actual return to that parish, and the residence there, receiving relief, as it was said, for the son only. "But," said COLERIDGE, J., in his judgment, "I cannot understand that the desire to return can have any effect upon the question as to the right to return; and here it is shown that there was no right to return. The chargeability *de facto* continued all the time; and although the application of the relief was to the son, I think we must take it that the relief was so given as to render the father chargeable." *Reg.* v. *Barnsley.*

Lunatics.—"The removal of a *lunatic pauper* to a lunatic asylum, under the provisions of any act relating to the maintenance and care of pauper lunatics, shall not be deemed a removal within the meaning of this act;" that is to say, is *not* to be deemed a breach of residence. Thus, in the case of *Reg.* v. *Leaden Roothing* (3 Bit. & Par. New Mag. Cas. 151), a pauper had resided five years, previously to his removal to a lunatic asylum, in a parish by which he was sent to the asylum and was maintained there. The parish had obtained orders adjudicating her settlement to be in another parish, R., and directing her maintenance by R. At the hearing of the appeal it was contended that the pauper having resided five years Lunatic paupers. *Reg.* v. *Leaden Roothing.*

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at L. previously to being sent to the asylum, and the time passed in the asylum being to be excluded from the computation of time, the lunatic pauper was irremovable. But the court held that the proviso in the Removals Act does not affect the provisions of the 8 & 9 Vict. c. 126, which direct that a lunatic pauper shall be supported by the parish in which he is *settled*, and not by that in which he would have a right to reside. And it refused to consider what might possibly be the effect of the detention in the asylum upon the pauper's removability, in case of his subsequent restoration. But this difficulty, as it seems to us, is effectually met by the proviso cited above from the statute now under consideration.

The *receipt of relief* from another parish has also been held *not* to be a breach of residence: (*Reg.* v. *Inhabitants of Croydon*, 3 Bit. & Par. New Mag. Cas. 60; *Reg.* v. *Inhabitants of Christchurch*, ib. 63.)

And now by 12 & 13 Vict. c. 103, s. 4, removal to a workhouse in the same union other than under an order of removal is not to be a disruption of residence.

Computation of the five years.

How the five years are to be computed.—The five years of continuous residence must be computed from the date of "the application for the warrant." They must be counted backwards, including one day and excluding the other.

Periods to be excluded from computation.

But the statute provides that certain periods of time passed under certain circumstances shall be *excluded* from the calculation; these are they—

1st. The time during which the pauper shall be a *prisoner in a prison*.

This, of course, means in a prison in the same parish after conviction, or perhaps an imprisonment *before conviction* in another parish, for an imprisonment after conviction in another parish has been held to be a breach of residence (see *ante*, p. 10.)

2nd. Or, shall be serving Her Majesty as a soldier, marine, or sailor.

3rd. Or, reside as an in-pensioner in Greenwich or Chelsea Hospitals.

4th. Or be confined in a lunatic asylum or house duly licensed, or hospital registered for the reception of lunatics.

Here, again, the question will return, whether a

removal to an asylum out of the parish is a breach of residence? It is excluded from the computation of time, but of what use is this, unless it was also intended to prevent residence in an asylum from destroying the privilege of irremovability? If, however, imprisonment out of the parish is a breach of residence which is not cured by this proviso, how can it be contended that it is otherwise with residence in a lunatic asylum? Nevertheless, although prompt and positive in this construction in the case of imprisonment, the court has declined to decide the same point in the case of a lunatic. In *Reg.* v. *Leaden Roothing* (3 Bit. & Par. New Mag. Cas. 151), a lunatic pauper had been sent to an asylum from a parish in which she had resided continuously for more than five years next before her being so sent, and that parish had maintained her there. Was she irremovable from the parish where she had so resided? This was not decided, for the case went off upon another point; but PATTESON, J., expressly refused to express an opinion upon it, and ERLE, J., said, "We need not decide whether there has been a break in the residence. . . . Perhaps the removal to the asylum might be regarded as rather in the nature of a temporary departure for the purpose of obtaining medical advice, accompanied with an *animus revertendi*." An ingenious but somewhat refined contrivance to escape from a palpable difficulty.

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Reg. v. *Leaden Roothing.*

5th. Or as a patient in a hospital.

The same difficulty would arise here, but that it might probably be got over by adopting the suggestion of ERLE, J., in the last case, and assuming that in such case an *animus revertendi* does exist.

6th. Or during which any such person shall receive relief from *any* parish.

It was attempted to be argued that receipt of relief was not merely an excluded period in the calculation of time, but a positive breach of residence. This, however, was negatived in *Reg.* v. *Croydon* (3 Bit. & Par. New Mag. Cas. 60.)

Reg. v. *Croydon.*

Another question has also been raised upon this provision, namely, whether, in computing the five years' residence, the exclusion of the period during

The proviso is retrospective.

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which relief is received applies to *any* period that is to be taken into the calculation, or only to such period as has elapsed since the statute came into operation. In other words, whether the proviso is retrospective, as well as the enacting clause. This was decided in the case of *Reg.* v. *Christchurch* (3 Bit. & Par. New Mag. Cas. 63), and the judgment so fully reviews the whole question, that it will be desirable to give it entire :—

Reg. v. *Christchurch.*

LORD DENMAN, C. J., delivered the judgment of the court.—The pauper had resided in the removing parish from 1839 until the order of removal in 1847, but had been receiving relief continually from 1843; if the time during which she was so receiving relief before the passing of the statute was to be excluded from the computation of time of residence, she was removable. The question is thus raised which has been stated in argument to be whether the proviso in the 1st section is retrospective, as well as the enacting clause. For the purpose of deciding between the two conflicting constructions, the effect of the enacting clause may be said to be, that no person who should have resided for five years next before the application for a warrant shall be removed; and the effect of the excepting clause, if confined to one case for example, is this, that the time during which such person shall be a prisoner, shall be excluded for all purposes in the computation of the time before mentioned. As the enacting clause applies to every residence of five years before the application for the warrant, it may apply to a case where part of such time was before the passing of the act, the 26th of August, 1846, and part subsequently, and when the person to whom the section applies was a prisoner during that part which was before the passing of the act, then the question arises whether that excepting clause applies to that part of the five years which had passed before the statute was enacted. On the one side the application of it to the time passed before the passing of the act is denied, because the future tense is used to express the time to which it is to apply, namely, "the time during which such person *shall be* a prisoner, shall be excluded;" and so it is said that these words could not be made to apply to the past time, and that a construction which requires a change of words in the statute is to be avoided; and because the application of the clause to the time past would make the statute retrospective, and the general rule is against the statute being so construed; and the reason for that construction in this case is said to be strengthened by the fact that in the enacting clause the past future tense is used, "shall have resided," and therefore the change of the tense in the following sentence indicates an intention to express a different time. On the other side, the application of the excepting clause to the time past before the statute is affirmed from the structure of

the two clauses, from the intention to be collected from the context, and because the reasons of the other construction fail. The structure of the two clauses is obviously for the purpose of defining cases where persons theretofore removable shall be irremovable, and that definition is effected by using in the enacting clause terms too wide, and by stating in the excepting clause the exception in a manner reducing the wider time to the intended limit in the enacting clause, which clause includes all persons who have resided five years; the excepting clause excepts from the class of all residents, several classes, among others, prisoners; and the form of the excepting clause appears to make it applicable to all the time to which the enacting clause applies; it assumes that the five years required by the enacting clause had been completed, and that the excepting clause would come into operation only in respect of such persons found to have resided for the required five years; and the mode in which it is directed to operate is by excluding the time they have been imprisoned, for example, from the computation so assumed to have been made. The process directed may be described to be this: when the five years can be computed for any person, then examine whether such person has been under disability during any part thereof, and whether as part of such residence he has been in prison; if *no*, the person is irremovable; if *yes*, the time thereof shall be excluded from the five years, and an equal portion of the preceding time brought into computation. The word "shall" denotes rather the happening of the event on which the exception is to apply within the time assumed, than the future relation of such an event to the time when the statute passed; it denotes the subjunctive mood, rather than a future time. The context confirms this view; the intention is to attach irremovability to a certain kind of residence. The reasons are too obvious to require a statement why the privilege (if it be so considered) is to be conferred, the burden imposed in respect of such residence is thus affected—why should a prisoner gain the privilege by being imprisoned?—why should the parish where a prison stands be subjected to a burden? These reasons apply quite as much to that part of the residence within the enacting clause, which has taken place before the passing of that act, as to the part that takes place afterwards; the one construction excepts all within the principle of the exception; the other leaves out part, without any apparent reason. When one of two constructions consists with the intention of the Legislature to be gathered from the statute, and the other is inconsistent therewith, the first is to be preferred. As to the reasons relied on for the other construction, the first rests entirely on grammatical grounds. A different grammatical view has been stated, and without that inconsistency and inconvenience which results from the construction which would prevent its being adopted; and the only argument in its favour was, that it imputed an incorrectness in grammar

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Judgment in *Reg.* v. *Christchurch.*

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to the framers of the statute. The second reason, namely, that there is a presumption against retrospection being intended, is founded on misconception, the statute being prospective only; its direct application is only on removal after it has passed; a space of time is an essential ingredient in the case to which it applies, and this space of time may consist, in part, of time passed before the statute, as in the case of the statutes of limitations and prescriptions, but they are not, therefore, passed with a retrospective view. If any presumption is to be derived from the retrospection of the statute in this clause, it affords an argument against the construction in support of which it is produced; for the existing enacting clause, it assumes to have a retrospective operation, which is supposed to be objectionable; the question is, whether the excepting clause should be applied to this portion, and, as far as the exception applies, of course the objectionable operation would be reduced.

On this review of the arguments we are led to the conclusion, that the construction secondly mentioned is correct; namely, that the excepting clause may apply to time within the enacting clause, although such time has passed when the statute passed.

Reg. v. *Bedwelty.*

The same point as to the receipt of relief not being a breach of residence was decided in *Reg.* v. *Bedwelty* (3 Bit. & Par. New Mag. Cas. 78.)

7th. Or shall be wholly or in part maintained by *any rate* or subscription raised in a parish in which such person does not reside (not being a *bonâ fide* charitable gift.)

Where there is a wife or children.

Where there is a wife or children.—It is expressly provided by the statute 9 & 10 Vict. c. 66, s. 1, amended by 11 & 12 Vict. c. 111, that "whenever any person should have a wife or children, having no other settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable, notwithstanding any provisions of the said recited act (9 & 10 Vict. c. 66), and should not be removable from any parish or place from which he or she would not be removable by reason of any provision in the said recited act."

Reg. v. *St. Ebbe's.*

On this there have been some decisions. In the case of *Reg.* v. *The Inhabitants of St. Ebbe's, Oxford* (3 Bit. & Par. New Mag. Cas. 62), the husband had absconded from the parish, leaving his wife and family chargeable, and it was contended that they could not be removed because he was not removable. But the

court held very properly that *removable* must be understood to mean *removable in law*, that is to say, in the legal position that rendered him *liable* to be removed. WIGHTMAN, J., said, "The phrase 'not removable,' in the proviso, only applies to the person who, if present, might be the subject of the order; it means 'not removable' by law, and has no reference to an accidental irremovability created by absence." And ERLE, J., in his terse and lucid manner, said, "All the Legislature requires is this, that if a warrant be asked for to remove the wife, the justices should act upon the determination of this question, 'If a warrant had been asked for to remove the husband, would there be anything *in law* to prevent its being granted?'" The same point was determined in *Reg.* v. *Pott Shrigley* (3 Bit. & Par. New Mag. Cas. 64), in the case of a husband breaking his residence by imprisonment, and, although the wife's residence had been continuous, she was held to be removable because he was so.

Who may be removed.

Reg. v. *Pott Shrigley.*

SECOND SECTION.

2. And be it enacted, that no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish, for twelve calendar months next after his death, if she so long continue a widow.

No widow liable to be removed for twelve months after death of husband.

This section *adds* another special exemption in the case of widows to those given by the 1st section. A five years' residence by the husband, or partly with the husband and partly as a widow, renders her irremovable. But by this section, although a widow may not have resided for five years, she cannot be removed for twelve calendar months after becoming a widow, provided she remain such.

Widows.

This section was held to be retrospective in the case of *Reg.* v. *St. Mary, Whitechapel* (3 Bit. & Par. New Mag. Cas. 8); *Reg.* v. *Glossop* (ib. 4); and *Reg.* v. *St. Pancras* (ib. 28.) In this last case the order had been obtained before the statute, and it was held that the order itself was not thereby avoided, but only suspended, and that it might be acted upon as soon as the twelve months had expired.

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The term "*residing*" here will have precisely the same interpretation as in the 1st section (*ante*, p. 8.) The husband and wife must be abiding there with an intention to continue, and the wife of a mere vagrant accidentally dying in the parish would not be entitled to the exemption.

Children of widow irremovable.

If the widow have children, they would be entitled to the same exemption as herself, because, by the 1st section, they are rendered irremovable if the parent be so.

Residence must be *with* the husband.

So the residence must be "*with*" the husband; she must *dwell* with him: although, it is presumed, a temporary absence, such as would not constitute a breach of residence on her part would not be deemed a ceasing to reside with him. But, whatever constitutes a breach of residence by the husband would be a breach of residence by the wife, as the residence required is a residence jointly with him. Being in prison in the same parish is, however, not a breach of residence by the husband, and the wife in such case remaining in the parish was held to be residing with him and the court refused to order her removal: (*Reg.* v. *Stogumber*, 9 Ad. & El. 622.)

It will be observed that the exemption ceases on her ceasing to be a widow.

The section is prohibitory and not merely permissive of the exemption, so that such a widow cannot be removed, even with her own consent. The justices have no power to make the order.

This residence during the year of exemption by widowhood may be added to a previous residence as a wife so as to make up the five years and render her absolutely irremovable, and in calculating this period the same rules will be applicable as have been already described.

Children.—A provision is made for these by the

THIRD SECTION.

No child under sixteen years of age liable to be removed.

3. And be it enacted, that no child under the age of sixteen years, whether legitimate or illegitimate, residing in any parish with his or her father or mother, step-father or step-mother, or reputed father, shall be removed, nor shall any warrant be granted for the removal of such

child from such parish, in any case where such father, mother, step-father, step-mother, or reputed father may not lawfully be removed from such parish. WHO MAY BE REMOVED.

Legitimate Children.—The effect of this section upon legitimate children is precisely similar to that of the proviso in the 1st section and in the amendment act. It only limits the age to which the benefit of the statute extends to *sixteen*, and requires residence with the parent. The residence must be similar to that required in other parts of the statute and described above, and like that of a wife, in the house of the parent. This also is an exemption in addition to that provided by the 1st clause. The residence of the parent would probably be deemed the residence of the child, so that a residence before sixteen might be added to a residence after to make up the five years and constitute absolute irremovability. Legitimate children.

Illegitimate Children.—As these now take the settlement of the mother (4 & 5 Will. 4, c. 76), this section is of no importance except when the child is residing with its reputed father, in which case, it would not be removable by reason of this section. But if the father should become removable, the child could not be removed with him, but must be removed to the mother's settlement. Illegitimate children.

Step-Children.—By this section a step-child cannot be removed while living with its step-parent. But if the step-parent be removable and removed, the step-child cannot be removed with him or her, but must be removed to the settlement of the parent of the child: (*Reg.* v. *Walthamstow*, 6 Ad. & El. 301.) Step-children.

Sick Persons.—These also are exempted from removal under certain circumstances, by the Sick persons.

FOURTH SECTION.

4. And be it enacted, that no warrant shall be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness or accident, unless the Sick persons not liable to be removed except under certain circumstances.

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justices granting the warrant shall state in such warrant that they are satisfied that the sickness or accident will produce permanent disability.

A question has been raised, whether the word "*becoming*" in this section is retrospective or only prospective, that is to say, whether it applies to paupers who *had become* chargeable before the act, or only to those who *should become* so afterwards? The opinion of the Attorney and Solicitor-General was that it was retrospective, and at this distance of time it is of no practical moment. The point can scarcely arise now.

Mr. LUMLEY suggests a possible difficulty in carrying out this section, "as the order simply states the fact of chargeability and the examinations may not show how the relief became necessary." (p. 77.) And he questions whether the examinations would be sufficient, if they do not show how it was rendered necessary. He, therefore, recommends that justices should in future "ascertain, before they issue their warrant, and set forth in the examinations, how the relief became necessary."

Chargeability.

Relief given to a wife or child, being part of his family, constitutes *chargeability* in the head of the family.

Permanent disability.

The term "*permanent disability*" is to be construed by the justices according to their common sense and best means of information. In all cases they should satisfy themselves of it by medical testimony on oath. Disability means, inability to earn his own maintenance, and *permanent disability* that he will not, at any future time, be able to do so. If the disability be only *partial* or *temporary*, the pauper cannot be removed.

We add some remarks by Mr. LUMLEY, in his Commentary on the Removals' Act, (p. 80.)

Apprehension of death.

"It is to be remarked that, though the statute provides for the apprehension of permanent disability, it does not provide for the contemplation of immediate death from sickness or accident, therefore the apprehension of such consequence will not, as it seems, interfere with the warrant of removal; which remark is, of course, only so far material as tending to show that in such a case the warrant may be made and suspended.

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"*Destitution.*—It seems proper to observe, that this clause does not appear to prevent the removal where there is destitution independently of sickness or accident, where it can be shown that the relief is not required in consequence of the sickness or accident, but by reason of the absolute destitution of the parties.

Destitution independent of sickness.

"This point has arisen frequently in reference to pregnant women, especially when unmarried. In consequence of the pregnancy they require relief. The pregnancy may or may not be accompanied with such ailments as constitute a sickness within the meaning of the clause; thus, the woman may be oppressed by great debility, or be taken in premature labour and require medical relief, or the relief may not be required until the ordinary labour actually occurs. If, on the happening of any such ailment, application be made for relief, the case is within the section. But if the pregnancy simply produces destitution, and the application be the result of such destitution, it does not appear that the section will prevent the removal."

The next section explicitly provides against any settlement being affected by the provisions of this statute.

FIFTH SECTION.

Settlement not to be gained by not being removed.

5. Provided always, and be it enacted, that no person hereby exempted from liability to be removed shall by reason of such exemption acquire any settlement in any parish.

Penalty for procuring Removals unlawfully.—A section is introduced, similar to that in Gilbert's Act (22 Geo. 3, c. 83, s. 41), to prevent the fraudulent practices too common in parishes.

SIXTH SECTION.

Penalty on persons unlawfully procuring removals of poor persons.

6. And be it enacted, that if any officer of any parish or union do, contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable, convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed, or

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give directly or indirectly any money, relief, or assistance, or afford or procure to be afforded any facility for such conveyance, or make any offer or promise or use any threat to induce any poor person to depart from such parish, and if, in consequence of such conveyance or departure, any poor person become chargeable to any parish to which he was not then chargeable, such officer, on conviction thereof before any two justices, shall forfeit and pay for every such offence any sum not exceeding five pounds nor less than forty shillings.

It will be observed that the penalty is imposed only upon officers of any parish or union, and not, as in *Gilbert's Act*, upon any person, thereby including rate-payers. It further requires that the pauper so removed should become actually chargeable to some other parish, which the former act did not.

The offences for which the penalty is inflicted are—

1st. Conveyance out of the parish.
2nd. Procuring the conveyance to be effected.
3rd. Giving money and relief, or assistance for such conveyance.
4th. Affording facility for it.
5th. Inducing the departure by offer or promise.
6th. Inducing by the use of threats.

But the act must be done with intent to cause the poor person to become chargeable to some other parish, and the poor person must also be proved to have become, in fact, chargeable to some other parish. The act must be *contrary to law*, that is to say, without the lawful authority of an order of removal.

But there seems to be no reason why such a removal may not be made with the consent of the two parishes, and of the pauper, for such a proceeding would not be contrary to law. It could not, however, be done without the pauper's consent.

It will be seen by reference to the interpretation clause in 4 & 5 Will. 4, c. 76, incorporated with this act, what is the definition of the terms *officer*, *parish*, and *union*.

Delivery of Paupers removed.—The difficulties that had arisen as to this are removed by the

Who may be removed.

SEVENTH SECTION.

7. And be it enacted, that the delivery of any pauper under any warrant of removal directed to the overseers of any parish at the workhouse of such parish, or of any union to which such parish belongs, to any officer of such workhouse, shall be deemed the delivery of such pauper to the overseers of such parish.

Delivery of paupers under orders of removal.

And as by statute 7 & 8 Vict. c. 101, s. 56, "for the purposes of *settlement* and removal," the workhouse of any union or parish is to be considered as situated in the parish to which each poor person to be removed is or has been chargeable, the most proper course is to take the pauper under order of removal to the union workhouse in which the parish is comprised to which he is to be removed. This will prevent all questions and difficulties as to the delivery to the proper person, and insure the due care of the pauper.

Incorporation of this act with the General Poor Law Act.—This is provided by the

EIGHTH SECTION.

8. And be it enacted, that an act passed in the fifth year of the reign of King William the Fourth, for the amendment and better administration of the laws relating to the poor in England and Wales, and all acts to amend and extend the same, and the present act, except so far as the provisions of any former act are altered, amended or repealed by any subsequent act, shall be construed as one act; and all penalties and forfeitures imposed under this act shall be recoverable as penalties and forfeitures under the said act for the amendment of the laws relating to the poor.

4 & 5 Will. 4, c. 76, and this act to be construed as one.

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The interpretation clause of 4 & 5 Will. 4, c. 76 (s. 109), gives the following definitions of terms used in the act now under review.

Definitions of terms.

"The words '*justice or justices of the peace*' shall be construed to include justices of the peace of any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate, unless where otherwise provided by this act:

"The word '*officer*' shall be construed to extend to any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant-overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union in carrying this act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions:

"The word '*overseer*' shall be construed to mean and include overseers of the poor, churchwardens, as far as they are authorised or required by law to act in the management or relief of the poor, or in the collection or distribution of the poor rate, assistant overseer, or any other subordinate officer, whether paid or unpaid, in any parish or union, who shall be employed therein in carrying this act, or the laws for the relief of the poor into execution:

"The word '*parish*' shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place, or division, or district of a place, maintaining its own poor, whether parochial or extra-parochial:

"The word '*person*' shall be construed to include any body politic, corporate, or collegiate, aggregate or sole, as well as any individual:

"The word '*poor*' shall be construed to include any pauper, or poor indigent person, applying for, or receiving relief from, the poor rate of England or Wales, or chargeable thereto:

"The words '*poor law*,' or '*laws for the relief of the poor*,' shall be construed to include every act of Parliament for the time being in force for the relief or management of the poor, or relating to the execution of the same, or the administration of such relief:

"The words '*poor rate*' shall be construed to include any rate, rate in aid, mulct, cess, assessment, collection, levy, ley, subscription, or contribution raised, assessed, imposed, levied, collected or disbursed for the relief of the poor in any parish or union:

"The word '*union*' shall be construed to include any number of parishes united for any purpose whatever under the provisions of this act, or incorporated under the said act made and passed in the twenty-second year of his late Majesty King George the

Third, intituled *An Act for the better Relief and Employment of the Poor*, or incorporated for the relief or maintenance of the poor under any local act: WHO MAY BE REMOVED.

"The word '*workhouse*' shall be construed to include any house in which the poor of any parish or union shall be lodged and maintained, or any house or building purchased, erected, hired, or used at the expense of the poor rate, by any parish, vestry, guardian, or overseer, for the reception, employment, classification, or relief of any poor person therein at the expense of such parish:

"And wherever in this act, in describing any person or party, matter or thing, the word importing the *singular* number or the *masculine* gender only is used, the same shall be understood to include, and shall be applied to *several* persons or parties as well as *one* person or party, and *females* as well as *males*, and several matters or things as well as one matter or thing respectively, unless there be something in the subject or context repugnant to such construction."

Limitation of act.—This act is limited by the

NINTH SECTION.

9. And be it enacted, that this act shall extend only to England. Act limited to England.

And England includes Wales, unless the latter be specially excepted: (20 Geo. 2, c. 42, s. 3.)

A summary of the whole may be convenient. Summary.

1. The parties who *may be removed* are such as have *come to inhabit* in, and have become *actually chargeable* to, the removing parish. Who may be removed.
2. The *coming to inhabit* must not be merely a *casual* residence, but a taking up of *the abode* in the removing parish, and a coming to *settle* there.
3. Actual *chargeability* must be by an *application for relief*.
4. A single man or a single woman may be removed.
5. A married woman may be removed, in her husband's absence, to the place of *his* last legal settlement; but if he have none, or it cannot be found, then to her maiden settlement.
6. But if a wife is residing with her husband, she cannot be removed alone, so as to separate her from her husband.
7. A child under sixteen years of age cannot be removed so as to be separated from its parent,

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and if the parent be removed it must be removed also.

8. Step-children cannot be removed from the step-parent until the age of sixteen, or the death of the parent.
9. Casual poor cannot be removed, although actually chargeable.

HOW REMOVAL TO BE MADE.

How removal to be made.

We now come to the proceedings to be taken for the purpose of obtaining an order of removal.

Witnesses.

The pauper and the witnesses necessary to support the case of the removing parish must be brought before two justices of the county in which that parish is situate, and for this purpose the pauper and the witnesses, or either of them, may be summoned to appear.

The examination.

The examination must be taken in writing, and should contain the whole of the evidence given by the parties examined.

Hitherto great strictness has been required in framing the examination, both as to form and substance, and the cases arising upon it have been very numerous. But their value has now been wholly destroyed by the new statute, 11 & 12 Vict. c. 31, intituled *An Act to amend the Procedure in respect of Orders for the Removal of the Poor in England and Wales, and Appeals therefrom*, and which came into operation on the 1st of August, 1848. By this statute the practice of orders of removal and appeals therefrom is now regulated.

THE EXAMINATIONS.

Examinations.

Ample provision appeared to be made against objections to *the form* of the examinations, the *acumen* of the lawyers continues to supply the court with cases of this class, spite of the rarity of success and the emphatic condemnation of the judges. It will be necessary to note these, although no objection can now be taken on the ground of defects in the depositions: (sect. 3, *post*, p. 42.)

Reg. v. *Halifax.*

The first is that of *Reg.* v. *Halifax* (3 Bit. & Par. New Mag. Cas. 6), which decided, as we have already observed, that the examinations need not negative that the chargeability has been occasioned by sickness or accident. This was also decided in other

subsequent cases: (*Reg.* v. *Llandoget*, 3 Bit. & Par. New Mag. Cas. 156; *Reg.* v. *Goole*, ib. 158.)

How REMOVAL TO BE MADE.

In *Reg.* v. *St. Pancras* (3 Bit. & Par. New Mag. Cas. 28), upon an order for the removal of a pauper from parish A. to parish B., upon a settlement gained by renting a tenement under 4 & 5 Will. 4, c. 76, s. 66, it appeared by the examinations that the pauper had complied with the statute in other respects, and had paid in one year certain sums for rates to a person acting as collector for parish B., and that the vestry clerk for parish B. attended before the removing justices and produced the rate books of the parish. It was objected that no copy of any extract from the rate book was sent with the examinations. But the court (COLERIDGE, J., *dubitante*,) held that the examination sufficiently showed an assessment of the pauper to the rates of parish B., and payment by him of the rates for one whole year. Even LORD DENMAN, C. J., in his judgment said, "There is great inconvenience because of the difficulty in identifying the books produced. . . Under the very special circumstances of the case, the parish upon whom the order is made having the books in their possession, I yield with pain to a dispensation with those plain and ordinary forms which are the only security for having proceedings of this nature conducted with propriety and fair play."

Reg. v. *St. Pancras.*

In the case of *Reg.* v. *St. Andrews, Plymouth* (3 Bit. & Par. New Mag. Cas. 57), the captions of examinations sent with an order of removal were in the following form:—"The examination of, &c., touching the place of the last legal settlement of, &c., taken on oath before us, &c., upon the complaint of B. M., one of the overseers, &c., made to us, &c., on behalf of himself and the other churchwardens and overseers (naming them)." The order of removal recited a sufficient complaint; and one of the examinants produced a written authority from the other parish officers to B. M. to make a complaint to two justices "as to the inhabiting, chargeability and receipt of relief of and by" the pauper. Copies of that written authority, and of a complaint in writing by B. M., in pursuance of that authority, and containing all necessary particulars, were sent with the order to the appellant parish. Upon both those documents were written the words following:—"Exhibited before us the day and year first above written, T. B., justice;

Reg. v. *St. Andrews, Plymouth.*

How REMOVAL TO BE MADE.

G. C., justice;" those being the names of the justices who had made the order. The following were two of the grounds of appeal:—"1. That it does not appear on the face of the examinations, or of any of them, that the said justices had any jurisdiction to take the said examinations or to make the said order. 3. That although a paper purporting to be a copy of an authority to make a complaint, and a certain other paper purporting to be a written complaint, or a copy thereof, have been irregularly and unnecessarily sent by you, yet it does not appear on the face of the examination, that the said authority or any copy thereof, or that the said written complaint or any copy thereof, was ever exhibited to the said justices, or that they ever heard or had notice of either of the said instruments, or that, in fact, any complaint was made to them corresponding to the contents and effect of the written instruments, or either of them, nor does it appear, on the face of the said examinations, of what nature the complaint recited in the headings thereof really was, nor what was its purport or effect." And it was held that the captions of the examinations were fatally defective; that the defect could not be cured by reference to the other document; and that the objection was sufficiently pointed out by the third ground of appeal.

Reg. v. *Pott Shrigley.*

In *Reg.* v. *Pott Shrigley* (3 Bit. & Par. New Mag. Cas. 64), a ground of appeal alleged that the examinations were bad, "the caption not stating them to be taken on the complaint of the overseers of the respondent parish." It was held, that under this ground of appeal the appellant could not object that the complaint made by the overseers was not sufficiently stated, the caption in fact stating the examinations to be taken on the complaint of the overseers, &c. as to the pauper's last place of legal settlement.

In the same case the relieving officer had stated in his examination "that the pauper is now resident in and receiving relief from the said respondent parish." And this was held to be sufficient evidence of chargeability.

Reg. v. *Goole.*

In *Reg.* v. *Goole* (3 Bit. & Par. New Mag. Cas. 158), the caption of the examinations was in the following form:—"The examination of A. B. taken upon oath before us, two of Her Majesty's justices, &c. in the county of, &c., upon the complaint of the churchwardens, &c., that the pauper now is inhabit-

ing and receiving relief," &c. This was held sufficient, it clearly appearing upon the face of the caption that the examination and the complaint were taken at the same time. How removal to be made.

In *Reg.* v. *Silchester* (3 Bit. & Par. New Mag. Cas. 82), it was held that an order of removal, made before the passing of 7 & 8 Vict. c. 101, s. 56, could not be supported upon an examination which only proved that the pauper was receiving relief from the removing parish in a union workhouse not stated to be situate in that parish. *Reg.* v. *Silchester.*

Still, we apprehend that no defect in the statements in the depositions will defeat the appeal if it be supplied by evidence there: (sect. 3, *post*, p. 42.)

Orders of Removal.—There are a few decisions upon *Orders of Removal*, which it may be useful to introduce.

The first was that of *Reg.* v. *Halifax* (3 Bit. & Par. New Mag. Cas. 6), in which it was decided that the examinations on which an order of removal is made should, since the 9 & 10 Vict. c. 66 (*ante*), negative that the chargeability has been occasioned by sickness or accident; and the case of *Reg.* v. *Llandoget* (3 Bit. & Par. New Mag. Cas. 156), further ruled that it was unnecessary to negative this in the order. The judges ridiculed the proposition. ERLE, J., said, "Must it go on to negative that the pauper was sixteen years of age and the like, negativing every possible case?" PATTESON, J., said, "The justices have jurisdiction whether the pauper is such or not. *Negatives are only necessary when the existence of the thing not negatived would oust the jurisdiction.* . . If in any case the chargeability should arise from sickness which is not temporary and the magistrates do not, as they ought, specify that fact in their order, that is a ground of appeal to the sessions." *Reg.* v. *Halifax.* *Reg.* v. *Llandoget.*

The same day his Lordship thus laid down the rule in the case of *Reg.* v. *Priors Hardwick* (3 Bit. & Par. New Mag. Cas. 157.) There an order of removal had been made by two magistrates in the usual form, no evidence being brought before them to show that the chargeability of the paupers was rendered necessary by sickness. At the hearing of the appeal sickness was proved, but not whether it was likely to produce permanent disability. It appeared that the chargeability *Reg.* v. *Priors Hardwick.*

How REMOVAL TO BE MADE.

had commenced prior to the passing of the statute 9 & 10 Vict. c. 66. The order of removal was held to be *bad*, for not stating that the justices were satisfied that the sickness would produce permanent disability. PATTESON, J., remarked, "I do not think that the sessions have anything to do with that question, as to the character of the sickness; it seems to me that the removing justices are bound to inquire into it and if sickness in fact exists, to state in the order that they are satisfied that it will produce permanent disability. Otherwise they are not to remove at all. If parish officers were to be permitted to keep back from the removing justices the evidence of sickness, great frauds would be committed upon the poor persons whom the act was intended to protect." And COLERIDGE, J. "It is not for the appellants to show that the order ought not to have been made."

Reg. v. *Goole.*

Again on the same day the same point was raised in a third case, *Reg.* v. *Goole* (3 Bit. & Par. New Mag. Cas. 158), and although fresh arguments were urged, the judges adhered to their opinion, but another objection was raised to the caption of the examinations, which was in the following form:—"The examination of A. B., taken upon oath before us, two of Her Majesty's justices, &c., of, &c., in and for the county of, &c., upon the complaint of the churchwardens, &c., that the pauper now is inhabiting and receiving relief, &c." It was objected that it did not thereby appear that the examination and complaint were taken at *the same time*. But the court held the objection to be untenable. PATTESON, J., expressed great aversion to formal and technical objections of this class. "I confess I should always be glad to avail myself of any astute point in order to get rid of these objections to the caption of examinations, than which nothing can be more vexatious. In this case the fair construction of the words is that the complaint was taken at the same time with the examination, and, if so, the jurisdiction appears."

Preamble.

Preamble.—The preamble to this statute describes the mischiefs which it was intended to remedy, and repeals so much of the stat. 4 & 5 Will. 4, c. 76 (the Poor Law Amendment Act), as required that the notice to be sent by the parish obtaining the order should be accompanied by a copy of the examination

upon which such order was made. The section is as follows:— How REMOVAL TO BE MADE.

FIRST SECTION.

1. Whereas the communication now by law required to be made by the overseers or guardians of any parish seeking to enforce an order for the removal of a poor person to the overseers or guardians of the parish to which such poor person is intended to be removed, of a copy of the examination upon which such order has been made, has been found to produce much expensive and useless litigation upon points of mere form, so that few cases of appeals against such orders are now decided upon the merits: for remedy thereof be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of an act passed in the session of Parliament holden in the fourth and fifth years of the reign of His late Majesty, King William the Fourth, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, as provides, in cases of orders of removal, that the notice thereby required to be sent by the overseers or guardians of the parish obtaining the order shall be accompanied by a copy of the examination upon which such order was made, shall be and the same is hereby repealed. So much of 4 & 5 Will. 4, c. 76, as provides that certain notices shall be accompanied by a copy of examination, &c. repealed.

NOTICE OF CHARGEABILITY.

The notice of chargeability here alluded to is directed by stat. 4 & 5 Will. 4, c. 76, s. 79, which enacts that "no poor person shall be removed or removable under any order of removal from any parish or workhouse, by reason of his being chargeable to or relieved therein, until twenty-one days Notice of chargeability.

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after a notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person (*and by a copy of the examination upon which such order was made*) shall have been sent by post or otherwise by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed."

The whole of this provision remains in force, *with the exception of the passage in italic and within brackets*, which is repealed by the recent statute. It is therefore necessary still to refer to it.

Upon this also there have been some decisions that will require the reader's attention.

Reg. v. *Colerne.*

In *Reg.* v. *Colerne* (3 Bit. & Par. New Mag. Cas. 10), the notice of chargeability was signed by three persons, described as "overseers of the poor of the parish." It was objected that this was bad, because it ought to appear on the face of the notice to be the act of the majority. But the court impatiently heard the argument and immediately decided that the notice was good. Per LORD DENMAN, C. J., "It is quite clear that we are bound to presume that those who may be a majority and as a majority are entitled to do the act, are a majority." And PATTESON, J., said, "It is a question of fact to be controverted."

Grounds of removal.

Statement of Grounds of Removal.—The overseers or guardians of the removing parish, or any three or more of such guardians, are to send by post or otherwise notice in writing of the pauper being chargeable and relieved, accompanied with a copy or counterpart of the order of removal, to the overseers of the parish to whom such order is directed. But this notice is now to be accompanied by a *statement of grounds of removal*, instead of by a copy of the examination, as formerly. This is provided by sect. 2, as follows :—

SECOND SECTION.

Such notice to be accompanied by a statement of grounds of removal

2. And be it enacted, that instead thereof such notice shall be accompanied by a statement in writing, under the hands of such overseers or such guardians, or any three or more of such

guardians, setting forth the grounds of such removal, including the particulars of the settlement or settlements relied upon in support thereof: provided always, that on the hearing of any appeal against any order of removal it shall not be lawful for the respondents to go into or give evidence of any other grounds of removal than those set forth in such statement.

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Instead of copy of examination.

This statement is to set forth the grounds of such removal, including the particulars of the settlement or settlements relied upon in support thereof.

Statement of grounds of removal.

As it is expressly enacted that, on the hearing of any appeal against any order of removal, the respondents shall not go into or give evidence of any other grounds of removal than those set forth in such statement, it will be necessary to state them with great particularity, and this will be the more desirable, inasmuch as, by the 4th section, no advantage can be taken of any defect in form, provided such grounds of removal are not so stated as to be "insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial."

But, on the other hand, some caution will be required *not to state too much*, for, by sect. 5, a discretion is given to the court to inflict costs upon a party who "shall have included in the statement of grounds of removal or of appeal sent to the opposite party, any ground or grounds of removal or of appeal which shall, in the opinion of the court determining the appeal, be frivolous *and* vexatious."

Some discretion will therefore be required to state *every* ground of removal (including the particulars of the settlement relied upon), which there is a reasonable probability of supporting, and to avoid the statement of anything which is likely to fail in proof, or which is liable to the charge of being frivolous *and* vexatious.

But it will be observed, that to empower the court to award costs in such case, it will not be enough that the statement be *frivolous*, it must be *vexatious* also: —that is to say, inserted for the purpose to mislead, perplex, or put the other party to unnecessary trouble or cost.

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From this it will be apparent that very great care will still be required in the framing of grounds of removal and appeal. They should be stated clearly and minutely, and confined as much as possible to *facts*.

The following are forms of the Examination, Notice of Chargeability, and Grounds of Removal, the latter being introduced only by way of *specimen*, and not as a precedent.

The *form* of the examination is now immaterial, for the respondents will, by sect. 3, be entitled only to copies of the depositions, if they apply for them.

EXAMINATION.

Form of examination.

Middlesex, to wit. } *THE EXAMINATION of A. B., of laborer, and C. D., of laborer, taken on oath this day of* A.D. *at before us, E. F. and G. H., esquires, two of Her Majesty's justices of the Peace for the county aforesaid (one of us being of the quorum), touching the place of the last legal settlement of the said A. B., and Jane, his wife, and their two children.*

This deponent, A. B., upon his oath saith, &c.

Taken before us, the day and year above mentioned. }

NOTICE OF CHARGEABILITY.

Parish of Taunton St. James, in the county of Somerset.

In the matter of A. B., a pauper.

To the churchwardens and overseers of the parish of Wilton, in the said county.

Notice of chargeability.

TAKE NOTICE, that the said A. B., lately residing at in this parish, has, together with Jane, his wife, and their two children, become chargeable to our said parish, and that an order of justices has been

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obtained for their removal to your parish of Wilton, as their last place of legal settlement, and that the grounds upon which such removal was ordered, including the particulars of the settlement or settlements relied upon in support thereof, are sent herewith. And take notice, that unless you appeal against the said order, and within twenty-one days from the date hereof duly serve notice of such appeal, the said paupers will be removed to your said parish of Wilton, in pursuance of the said order. Dated this day of 1849.

STATEMENT OF GROUNDS OF REMOVAL.

Statement of grounds of removal.

The following are the grounds upon which the removal of the said A. B., together with his wife Jane, and his two children, to the said parish of Wilton, was ordered by the said justices, including the particulars of the settlement or settlements relied upon in support thereof.

That the said A. B. was born in your said parish of Wilton on or about the 1st *day of in the year .*

That the said A. B. served under an indenture of apprenticeship to one C. D. of carpenter, in your said parish of Wilton, and during the last forty days of service under such apprenticeship was resident in your said parish of Wilton.

That the said A. B., served one E. F., of farmer, in your said parish of Wilton, for one whole year, under a yearly hiring, to wit, on or about the year and during such service was resident in your said parish of Wilton.

That the said A. B. did in or about the year rent a house and garden at in your said parish of Wilton, at the rent of £10 *a year, and occupied the*

How REMOVAL TO BE MADE.

same under such yearly renting, from that time until the of and paid the rent due for the same during the whole of that time.

A. B. } *Churchwardens.*
C. D. }

E. F. } *Overseers.*
G. H. }

Grounds of removal.

This will suffice to show generally the manner in which, as it appears to us, the statement of grounds of removal should be made, adding, omitting, or varying them, of course, according to the circumstances of the particular case. The test of *sufficiency* will be, whether the statement so informed the respondents of the grounds of removal that they might have been enabled to institute inquiries into their truth. The test of *excess* will be, whether it was *purposely* so worded as to put them upon *the wrong scent*, and induce them reasonably to incur expenses in a bootless inquiry.

It appears to us to be quite unnecessary to give a more detailed statement of the facts, because, by sect. 3, the other parish is entitled to a copy of the depositions, which will enable it to ascertain the particular facts, of which the *general results* only are set forth in the statement.

On the other hand, it appears to be sufficiently explicit to enable the respondents to go into any of the grounds of appeal so stated.

By whom to be signed.

The notice must be signed by a majority of the churchwardens and overseers in parishes, in townships by a majority of the overseers, or in either by any three of the guardians of the poor of the removing parish, if under the management of guardians.

The words "overseers or guardians or any three or more of such guardians" are used also in the Poor Law Amendment Act, and they will have the same interpretation. "*Guardians*" does not mean the guardians of a union, but the guardians of a parish so governed: (*Reg.* v. *Lambeth*, 5 Q. B. 513.) "*Overseers*" means a majority of the churchwardens and overseers, or of the overseers in a township: (*Reg.* v. *Westbury*, 5 Q. B. 500.)

Upon this question of the manner of stating the grounds of appeal there have been few decisions; the

power of amendment given to them by this statute being, doubtless, liberally exercised by the quarter sessions, in order to prevent litigation. The following, however, are important:— How REMOVAL TO BE MADE.

In *Reg.* v. *St. Giles* (3 Bit. & Par. New Mag. Cas. 6), the examinations had only disclosed a birth settlement of the husband in the appellant parish. One of the grounds of appeal was that the widow and her children were not at the date of the order, nor was the husband, at the time of his decease, legally settled in the appellant parish; and this ground of appeal was held sufficient to put the respondents to proof of the birth settlement of the husband so set up in the examination. It was contended that the ground of appeal did not *traverse any fact* stated in the examination. *Reg.* v. *St. Giles.*

The case of *Reg.* v. *St. Andrews, Plymouth* (*ante*, p. 29), shows what statement of grounds of appeal is sufficient to let in an objection to the caption to the examination. It is unnecessary to repeat it here.

It appears from the case of *Reg.* v. *Pott Shrigley* (3 Bit. & Par. New Mag. Cas. 64), that when it is intended to object that the caption did not *sufficiently* state that the examination was taken on complaint of the overseers, &c., it will not do to say merely that it *does not* so state. Here the ground of appeal alleged the examinations to be bad, "the caption not stating them to be taken on the complaint of the overseers," &c. But it was held that, under this ground of appeal, the appellants could not object that the complaint was not sufficiently stated, but only that it was not stated at all; and that they could not do this, because, by the very ground of appeal, it was admitted that it was stated in fact. *Reg.* v. *Pott Shrigley.*

In *Reg.* v. *Preston* (3 Bit. & Par. New Mag. Cas. 152), an order of removal was made on the following examinations:—The pauper said, "The township of S. has for years paid me weekly relief, whilst residing out of that township. About nine or ten years ago I went from P. to S. and acquainted Stott, who was then the overseer for that township, with my condition, and claimed relief from him as one of the poor belonging to S. He agreed to allow me 1*s.* 6*d.* per week, which I was to receive at the overseer's office in P. I received that weekly relief from S. for several years. It was first paid by Mr. H. who was then *Reg.* v. *Preston.*

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the relieving officer for P.; and afterwards by Mr. C., who succeeded him in that office." The said Mr. C. said: "From March to September, 1844, I paid the pauper weekly relief by the direction of Mr. Stott, who was then relieving officer for the township of S., the pauper having claimed to belong to the last-named township, and Mr. Stott having admitted the pauper's settlement so claimed. The relief I so paid was repaid me by the said township of S." The material ground of appeal stated that Mr. Stott was not an overseer of the poor of S. in 1844, and that the said Mr. Stott did not admit that the pauper was settled in S. as stated in the examinations. The sessions thought that that ground of appeal left untraversed enough to support the order; and consequently refused to receive any evidence of acknowledgment by relief, but on another point quashed the order. Upon a case reserved it was held, that the examinations contained some legal evidence, not denied by the ground of appeal, of relief given by the appellant township to the pauper, whilst he was residing out of that township; but that the sessions would have acted more properly if they had heard the evidence.

Here the objection was the reverse of that in the preceding case: (*Reg.* v. *Pott Shrigley.*) In that case the ground of appeal was intended to be an insufficiency in the statement of a fact, but it was so drawn as to traverse the fact stated. Here it was intended to be to the whole statement, but it was so drawn as to traverse only a part of it, leaving the fact intended to be disputed really untraversed. "The question for us now," said WIGHTMAN, J., "is, whether there is any evidence of relief not denied by the ground of appeal, and I was struck by the language of that ground of appeal. It says that Stott did not admit the settlement as stated in the examinations; and in one of the examinations there is an express statement that Stott did admit the settlement. It would seem, therefore, as if the ground of appeal was pointed to that statement, rather than intended as a denial of the facts of payment and repayment."

Reg. v. *Ealing.*

In *Reg.* v. *Ealing* (3 Bit. & Par. New Mag. Cas. 159), a ground of appeal stated that B. the husband of the pauper (who was removed by order to her maiden settlement) "was born in or about the year

1810, in the parish of P., in the county of S." It was objected that this was too vague to let in evidence of the husband's birth settlement; there was no name of place or persons to fix the part of the parish in which the birth took place, so as to enable the respondents to inquire. But the court held the ground of appeal to be sufficient to have called upon the sessions to have heard the evidence. It was observed by PATTESON, J.— How REMOVAL TO BE MADE.

"Here the birth is stated to have taken place in the parish of Portsea; and this is different therefore from the Ipswich case (*Reg.* v. *St. Mary, Beverley*), where it appeared that in Ipswich there are several parishes. Here, there being only one parish, it is an easy matter to search the register of that parish; but the birth is said to have taken place 'in or about' 1810; and I think that is a reasonable statement; and not so vague as to entitle the respondents to say that no evidence ought to be received under it. This is not like either of the cases cited by Mr. *Bodkin*. In *Reg.* v. *Derbyshire*, the ground of appeal stated a hiring and service without names or dates, the omission of which rendered the information insufficient; because what were the respondents to do? Were they to go to the particular parish, and make inquiry of every person in the parish? The ground of appeal was so vague that it presented to the other side no means of inquiry. As to *Reg.* v. *Sussex*, it certainly seems to be a very strict case; but it went upon the ground that the appellants had omitted to give information, which it must be taken that they had the means of giving; they stated that the pauper had rented a tenement, without saying from whom. Here the respondents might have gone and searched the register for the year 1810 and a year or two before and after; and I think therefore they had sufficient information; which is the question reserved for our opinion."

From these cases it may be gathered that the grounds of appeal should distinctly traverse whatever facts it is intended to deny, and state the precise defect in the examinations on which it is intended to rely, and that to traverse all when it is intended only to dispute a part, or to traverse part when the whole statement is to be contested, will be equally fatal.

How sent.—The notice of appeal, with the statement of grounds of removal, must be sent as soon as possible after the order made, by post or otherwise, to the overseers of the parish upon which the order is made. The safer course is to send it by post, addressed to the churchwardens and overseers. How to be sent.

How REMOVAL TO BE MADE.

Duties of parish on whom order is made.

Duties of parish on whom order is made.—Immediately on receipt of such notice, it will be the duty of the officers of the parish receiving it, if they entertain any doubt as to the validity of such order, either in law or in fact, to submit it, together with the statement of grounds of removal, to their legal adviser, and to avail themselves of the provisions of the 3rd section of the new statute, which requires the clerk to the removing justices to furnish them, upon application, with a copy of the depositions, for which they are to pay at the rate of *twopence* for every folio of seventy-two words. But it is expressly provided that no omission or delay in furnishing such copy is to be deemed a ground of appeal against the order, nor is any order to be invalid on the ground that the depositions do not furnish sufficient evidence to support it, or that any matter contained in, or omitted from, it, raises an objection to the order or grounds of removal. The meaning of this is, as we take it, that, except for the purpose of information, no use can be made of the depositions—in fact, that the quarter sessions are in no way to take cognizance of them.

THIRD SECTION.

Copy of depositions to be furnished on application.

3. And be it enacted, that the clerk to the justices who shall make any order of removal shall keep the depositions upon which such order was made, and shall within seven days furnish a copy of such depositions to the overseers or guardians as aforesaid, of the parish to which the removal is by such order directed to be made, if such overseers or such guardians shall apply for such copy, and pay for the same at the rate of two-pence for every folio of seventy-two words; provided that no omission or delay in furnishing such copy of the depositions shall be deemed or construed to be any ground of appeal against the order of removal; provided also, that on the trial of any appeal against an order of removal no such order shall be quashed or set aside, either wholly or in part, on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein

contained or omitted raises, an objection to the order or grounds of removal. How removal to be made.

Upon this section, read alone, there arises a considerable difficulty. The clerk to the justices is to furnish a copy of the depositions "within seven days," but it does not say whether this is to be seven days after the order made, or seven days after application made for them. From the 9th section, however, it is plain that the appellant parish may apply within twenty-one days, and then the further time of fourteen days is allowed for the giving such notice. As there is no limit within which the *copy of the depositions* may be applied for, it is presumed that it may be had at any time, although sect. 9 limits the period within which a *notice of appeal* can be given.

Notice of Appeal.—Should it be determined to appeal, the overseers or guardians of the appellant parish are to give to the overseers or guardians of the removing parish, within twenty-one days after receipt of notice of chargeability, a *notice of appeal.* But, if within twenty-one days after such receipt of notice, the officers of the parish receiving it shall have applied to the justice's clerk for a copy of the depositions, as above directed, in such case a *further period of fourteen days* will be allowed for giving notice of appeal, and in the meanwhile no removal of the pauper is to be made. This is enacted by sect. 9 as follows:— Notice of appeal.

NINTH SECTION.

9. And be it enacted, that no appeal shall be allowed against any order of removal if notice of such appeal be not given as required by law, within the space of twenty-one days after the notice of chargeability and statement of the grounds of removal shall have been sent by the overseers or guardians of the removing parish to the overseers or guardians of the parish to which such order shall be directed, unless within such period of twenty-one days a copy of the depositions shall have been applied for as aforesaid by the last-mentioned overseers or guardians, in No appeal if notice be not given within a certain time after notice of chargeability.

How removal to be made.

which case a further period of fourteen days after the sending of such copy shall be allowed for the giving of such notice of appeal; but in such case no poor person shall be removed under such order of removal until the expiration of such further period of fourteen days.

Times within which notice of appeal must be given.

Some doubts have been expressed as to the computation of time under this section, as it appears to us, without sufficient reason. The language of the Act seems sufficiently explicit; but perhaps it may be convenient to state its effect under the various circumstances in which it may be applied.

1. Where copies of the depositions are *not* applied for, the notice of appeal must be given within *twenty-one days* after the notice of chargeability *sent*.

2. Where copies of the depositions *are* applied for within twenty-one days after notice of chargeability *sent*, the notice of appeal must be given as follows:—

If the copies of depositions are sent within seven days after notice of chargeability sent, then notice of appeal must be given within twenty-one days from such notice of chargeability *sent*.

If copies sent—

within 8 days, notice must be given within 22 days,
„ 9 days, „ „ 23 days,
„ 10 days, „ „ 24 days,
„ 11 days, „ „ 25 days,
„ 12 days, „ „ 26 days,

of notice of chargeability *sent*, and so forth, up to 35 days, which is the *latest* period at which, under any circumstances, a notice of appeal can be given.

It will be observed that the time of the *sending*, and not of the *receipt*, of the notice of chargeability and of the copies of the depositions is to regulate the computation of time.

If the justice's clerk should not send the copies of depositions within the seven days, as directed, no advantage can be taken of it, and the appellant will still be entitled to fourteen days from the time of the sending of such copies, for giving his notice of appeal.

How removal to be made.

Upon this section it has been well observed by an able commentator upon the statute in the *Law Times*:

"Whether this section does destroy the right of appeal against the removal itself, independently of the order, will probably be one of the questions that the Court of Queen's Bench must decide; for it will probably be argued that, prior to the statute, there being an appeal against the order as a grievance, or against the removal, that the statute uses words which would be satisfied by being limited to the appeal against the *order*, and the case might be put of no order being sent, and the pauper removed. We do not mean to express our opinion that the court would so hold, but the question will probably arise before long. The cases upon the right to appeal against the removal, which will bear upon it, are *Rex* v. *Suffolk*, 4 A. & E. 319; *Reg.* v. *Salop*, 6 Dowl. P. C. 28; *Reg.* v. *Middlesex*, 9 Dowl. P. C. 163; *Reg.* v. *Recorder of Leeds*, 2 New Mag. Cas. 104; 16 L. J. 153, M. C.; *Reg.* v. *Middlesex*, 16 L. J. 135, M. C.

Effect of application for copies of depositions.

"However, under this section, the time of appeal will be limited to twenty-one days after notice of chargeability *sent*, unless application be made within that time for a copy of the depositions. That application will operate *as a suspension of the time*, and a new period of fourteen days will commence from the sending of such copy, which will then be the limit of the period of appeal. The demand will be analogous to a demand of oyer, and, *until complied with*, the fourteen days will not begin to run. In any case, however, there will be twenty-one days."

From the words "unless within such period of twenty-one days a copy of the depositions shall have been applied for," it may be gathered that, although the time for giving notice of appeal is thus limited, there is no limit to the time within which the justice's clerk, under section 3, is to supply a copy of the depositions.

How removal to be made.

The following is a

FORM OF NOTICE OF APPEAL.

Notice of appeal.

To the Churchwardens and Overseers of the Poor of the Parish of Taunton St. James, in the County of Somerset.

TAKE NOTICE, that we, the churchwardens and overseers of the poor of the parish of Taunton St. James, in the county of Somerset, do intend, at the next general quarter sessions of the peace to be holden for the said county of Somerset, to appeal against an order of C. D. and E. F. esqrs., two of Her Majesty's justices of the peace of the said county of Somerset, for the removal of A. B. and Jane his wife, to our said parish of Wilton. And that the grounds of such appeal are as follow:

That the said A. B. was not born in our said parish of Wilton.

That the said A. B. did not serve under any indenture of apprenticeship to C. D. carpenter, in our said parish of Wilton, nor during the last forty days of service under any such apprenticeship reside in our said parish of Wilton.

That the said A. B. did not serve E. F. farmer, in our said parish of Wilton for one whole year, under a yearly hiring in or about the year nor in any other year, nor was he during that or any other service at a yearly hiring resident in our said parish of Wilton.

That the said A. B. did not in or about the year occupy a tenement of the yearly value of £10 and upwards in our said parish of Wilton. (As the case may be.)

And if it be intended to set up some other settlement than that relied upon by the removing parish, then, after negativing (if it be so purposed) the settlement asserted by the removing parish, proceed to

state the case of the appellant parish, which may be as follows, varying the statement according to the nature of the case:— How REMOVAL TO BE MADE.

And also that (after such service under such indenture of apprenticeship, namely, on or about the year) the said A. B. went to reside in the parish of in the county of and while there residing, namely, at Christmas, in the same year, hired himself as a servant to one E. F. of in the said parish of for one year, until Christmas in the year and served him accordingly. And also that, after he had so served the said E. F. as aforesaid, namely, on or about the month of June in the year he rented a house at in the parish of in the county of from one J. K. at the yearly rent of £10, and occupied the same under such hiring at such rent from that time until the month of in the year , and during that time paid the rent due for the same. Grounds of appeal.

And take notice, that at the trial of the said appeal we, on behalf of the said parish of Wilton, shall avail ourselves of all or some one or more of the said grounds of appeal. Witness our hands this day of 18

L. M.
N. O. } *Churchwardens.*

P. Q.
R. S. } *Overseers.*

This statement of grounds of appeal must, of course, be varied according to the facts; the above is intended merely as an illustration of the form and manner of setting them forth, and are not to be literally followed in any particular.

Nor is such anxious attention to the *form* necessary now as formerly, for the new statute has made extensive provisions for all defects that may be made in the *framing* of the notice and statement of grounds of appeal. Sect. 4, after reciting the object of such statement, that it is for "the purpose of enabling the party receiving it to inquire into the subject of such Statement of grounds of appeal.

How removal to be made.

statement, and, if need be, to prepare for trial," enacts that, upon the hearing of the appeal "no objection whatever on account of any defect in *the form* of setting forth any ground of removal or of appeal, in any such statement, shall be allowed, and no objection to the reception of legal evidence offered in support of a ground of removal or appeal alleged to be set forth in any such statement shall prevail, unless the court shall be of opinion that *such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial.*"

In fulfilling this condition, good sense must be the guide. There should be an honest purpose fairly and fully to inform the other party of the true grounds upon which the appellant relies, and this should be done concisely and clearly, in plain English, and with the fewest technicalities. But it should *always* be done by the legal adviser of the parish. The officers should never attempt to frame notices for themselves. A lawyer only can determine what is or is not a sufficient and safe ground of appeal.

As an insufficient statement might subject the appellants to an objection on that ground, and to the loss of their appeal, or to amendment of their statement of grounds, or to an adjournment of the hearing, and upon any of these to *costs*, at the discretion of the court (sect. 4), so, by the following section (5), if they state too much and make a frivolous and vexatious statement, they will be liable, at the discretion of the court, "to pay the whole or any part of the costs incurred by the other party in disputing any such ground or grounds:" (sect. 5.)

The grounds of appeal need not form a part of the notice, as in the above precedent; they may be stated separately, in a separate paper, in which case they should run thus:—

To the Churchwardens and Overseers of the Poor of the Parish of Taunton St. James, in the County of Somerset.

In the matter of an Appeal, wherein the Churchwar-

dens and Overseers of the Poor of the Parish of Wilton are the appellants, and

How REMOVAL TO BE MADE.

The Churchwardens and Overseers of the Poor of the Parish of Taunton St. James are the respondents.

TAKE NOTICE that the grounds of the above appeal are—(stating them as above).

The notice and grounds of appeal are to be under the hands of the overseers or the guardians, or any three or more of the guardians of the appellant parish: (sect. 2.) It will suffice that it be signed by a majority of the churchwardens and overseers of the appellant parish: (*R.* v. *Justices of Warwickshire*, 6 Ad. & El. 873.) But it is not necessary that the notice should state that they are a majority: (*Reg.* v. *Colerne*, 3 Bit. & Par. New Mag. Cas. 10.) And it will not suffice that it be signed by an attorney, on their behalf: (*R.* v. *The Justices of Worcester*, 1 Wil. W. & Hod. 152.)

By whom notice to be signed.

This notice must be sent or delivered *within twenty-one days* from the receipt of notice of chargeability (or where application has been made within twenty-one days for a copy of the depositions under sect. 3, then within *fourteen* days after the *sending* of such copy), to the overseers of the respondent parish.

How notice to be sent.

But where the sessions fall within the respective periods of twenty-one days and fourteen days, as the case may be, the notice must be for the next practicable sessions. (*a*)

ABANDONMENT OF ORDER.

It is competent to the parish obtaining the order of removal to abandon it *at any time* before the hearing of the appeal.

Abandonment of order.

Formerly, the time and manner of abandoning an order gave rise to continual disputes as to costs, and opinions and decisions were very conflicting upon the subject. But now, by the new act, express provision has been made for this, and the parties obtaining such order are empowered to abandon it, whether notice of appeal has or has not been given, or the

(*a*) The *grounds of appeal* are not *required* to be sent *with the notice*. They *may be* sent or delivered at any time within fourteen days before the sessions. But inasmuch as the new statute (12 & 13 Vict. c. 45, s. 6) empowers the sessions "upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered," to give costs to the party receiving, to be paid by the party giving, it will be advisable in all cases to settle the grounds of appeal before giving notice of appeal, and then they may be sent or delivered together.

Grounds of appeal, when to be sent.

Costs for not presenting notice of appeal.

ABANDONMENT OF ORDER.

appeal has or has not been entered, giving "*notice in writing* under the hands of such overseers or guardians, or any three or more of such guardians, to be sent by post, or delivered to the overseers or guardians as aforesaid of the parish to which such person is by the said order directed to be removed," and thereupon such order is to become null and void.

Costs on abandonment.

And, on such abandonment, the overseers and guardians of the parish so abandoning shall pay to the other parish the costs incurred by them by reason of such order, and of all subsequent proceedings thereon, "which costs the proper officer of the court before whom any such appeal (if it had not been abandoned) might have been brought shall, and he is hereby required, to ascertain *at any time*, whether the court shall be sitting or not, upon production to him of such notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the overseers or guardians abandoning such order, as the distance between the parishes shall in his judgment require." The section is as follows:—

EIGHTH SECTION.

Abandonment of orders of removal.

8. And be it enacted, that in any case in which an order shall have been made for the removal of any poor person, and a copy or counterpart thereof sent as by law required, it shall and may be lawful for the overseers or guardians of the parish who shall have obtained such order of removal, whether any notice of appeal against such order shall or shall not have been given, and whether any appeal shall have been entered or not, to abandon such order by notice in writing under the hands of such overseers or guardians, or any three or more of such guardians, to be sent by post or delivered to the overseers or guardians as aforesaid of the parish to which such person is by the said order directed to be removed; and thereupon the said order, and all proceedings consequent thereon, shall become and be null and void to all intents and purposes as if the same had not been made, and shall not be in any way given in evidence in case any other

order of removal of the same person shall be obtained: provided always, that in all cases of such abandonment the overseers or guardians of the parish so abandoning shall pay to the overseers or guardians of the parish to which such person is by the said order directed to be removed the costs which the said last-mentioned overseers or guardians shall have incurred by reason of such order, and of all subsequent proceedings thereon, which costs the proper officer of the court before whom any such appeal (if it had not been abandoned) might have been brought shall and he is hereby required, upon application, to tax and ascertain at any time, whether the court shall be sitting or not, upon production to him of such notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the overseers or guardians abandoning such order as the distance between the parishes shall in his judgment require, and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be indorsed upon the said notice of abandonment, and the said notice so indorsed shall be filed among the records of the said court; and if the said costs so allowed be not paid within ten days after such costs shall have been lawfully demanded, the amount thereof may be recovered from such last-mentioned overseers or guardians in the same manner as any penalties or forfeitures are recoverable under the said act passed in the session of Parliament holden in the fourth and fifth years of the reign of King William the Fourth.

ABANDONMENT OF ORDER.

As to payment of costs on abandonment.

THE APPEAL.

Proof of Notice.—The respondents may, if they please, require proof of service of notice of appeal, but it is not usual to do so if it has been, in fact, duly served.

Notice.

THE APPEAL.

Order of hearing.

Order of Hearing.—If the appellants do not, in their statement of grounds of appeal, deny the case of the respondents, as stated in their grounds of removal, inasmuch as it is an admission of the respondents' case *pro tanto*, the latter are not bound to prove it, and the appellants should begin. But if the case of the respondents is contradicted in the grounds of notice of appeal, the former must begin and prove their case. Then the counsel for the appellants comments upon it, and opens his case, if he call witnesses. But if he do not call witnesses, the case is then closed, and there is no right of reply. If, however, he call witnesses, the counsel for the appellants sums up, but limiting his remarks to the evidence of the witnesses he has called, and its bearing on the case, and then the counsel for the respondents is entitled to the general reply.

The same relative order is observed where the appellants' counsel begins.

The hearing.

The Hearing.—At the hearing, the parties are, by the new statute, strictly limited to their statements of grounds of removal and of appeal respectively. No objection is now to prevail "on account of any defect in the form of setting forth any ground of removal or of appeal in any such statement," or "to the reception of legal evidence offered in support of a ground of removal or appeal alleged to be set forth in any such statement," unless the court shall be of opinion "that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial:" (sect. 4.)

Power to amend and adjourn.

Power to amend and adjourn.—And "in all cases where the court shall be of opinion that any such objection to such statement, or to the reception of evidence, ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such statement of grounds of removal or of appeal to be forthwith amended by some officer of the court or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable:" (sect. 4.)

FOURTH SECTION. THE APPEAL.

As to the sufficiency of statement of grounds of removal or appeal.

4. And whereas a statement of the grounds of removal or of appeal is required to be communicated for the purpose of enabling the party receiving it to inquire into the subject of such statement, and, if need be, to prepare for trial; be it therefore enacted, that upon the hearing of any appeal against an order of removal no objection whatever on account of any defect in the form of setting forth any ground of removal or of appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of a ground of removal or appeal alleged to be set forth in any such statement shall prevail, unless the court shall be of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: provided always, that in all cases where the court shall be of opinion that any such objection to such statement or to the reception of evidence ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such statement of grounds of removal or appeal to be forthwith amended by some officer of the court or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable.

Power to amend statement of grounds of removal or appeal.

Frivolous and vexatious grounds of removal or of appeal.

Costs of frivolous and vexatious Grounds of Removal or Appeal.—By sect. 5 power is given to the court of quarter sessions to inflict costs on either party who "shall have included in the statement of grounds of removal or of appeal sent to the opposite party any ground or grounds of removal or of appeal which

THE APPEAL. shall, in the opinion of the court determining the appeal, be frivolous and vexatious."

FIFTH SECTION.

Party making frivolous or vexatious statement of grounds of removal or appeal liable to pay costs.

5. And be it enacted, that if either of the parties to the said appeal shall have included in the statement of grounds of removal or of appeal sent to the opposite party any ground or grounds of removal or of appeal which shall, in the opinion of the court determining the appeal be frivolous and vexatious, such party shall be liable, at the discretion of the said court, to pay the whole or any part of the costs incurred by the other party in disputing any such ground or grounds, such costs to be recovered in the same manner as any penalties or forfeitures are recoverable under the said act passed in the session of Parliament holden in the fourth and fifth years of the reign of His late Majesty King William the Fourth.

Power to amend order.

Power to amend Order of Removal.—Sect. 6 empowers the court, "upon the trial of any appeal against an order of removal, or upon the return to a writ of *certiorari*, if any objection be made on account of any omission or mistake in the drawing up of such order, and it be shown that there were in fact sufficient grounds before the magistrates making the order to have authorized such making, to amend the same, on such terms as to costs as it shall think fit, and to give judgment as if no such omission or mistake had existed." The section is as follows :—

SIXTH SECTION.

Power for court to amend order of removal on account of omission or mistake.

6. And be it enacted, that if upon the trial of any appeal against an order of removal, or upon the return to a writ of *certiorari* any objection shall be made on account of any omission or mistake in the drawing up of such order, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before

the magistrates making such order to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order of removal, and to give judgment as if no such omission or mistake had existed: provided always, that no objection on account of any omission or mistake in an order of removal brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such writ of *certiorari*.

Proviso.

Evidence of respondents.

Evidence of Respondents to be limited to Grounds of Removal stated.—It is expressly provided by sect. 2, "that on the hearing of any appeal against any order of removal, it shall not be lawful for the respondents to go into or give evidence of any other grounds of removal than those set forth in such statement."

Objection not to be taken to depositions.

Objection not to be taken to Depositions.—The 3rd section, which requires the clerk to the justices to supply, upon application to the officer of the parish upon which an order of removal is made, a copy of the depositions, provides also, that no omission or delay in furnishing such copy of the depositions shall be deemed or construed to be any ground of appeal against the order of removal: provided also, that on the trial of any appeal against an order of removal "no such order shall be quashed or set aside, either wholly or in part, on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises, an objection to the order or grounds of removal." In fact, the depositions are to be treated simply as *information*, and not as in the nature of a *legal notice*.

Evidence of appellants.

Evidence of Appellants to be limited to Grounds of Appeal stated.—It is provided by the Poor Law Amendment Act, 4 & 5 Will. 4, c. 76, that "it shall not be lawful for the respondent or appellant parish, on the hearing of any appeal, to go into or give evidence of any other grounds of removal, or of appeal

THE APPEAL. against any order of removal, than those set forth in such respective order, examination, or statement, as aforesaid."

So much of this as relates to the statement of grounds of *appeal* is still in force. But most of the questions that used to arise upon it, as to sufficiency of statement, and what evidence may be let in under it, are now prevented by the provision in sect. 4 of the new statute, which enacts "that no such objection shall prevail unless the court be of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement and to prepare for trial." And even when the court should hold such opinion, it is empowered to amend or to adjourn the hearing, upon such terms as it may deem the justice of the case to require. And if, in the opinion of the court any ground of appeal be frivolous and vexatious, it is empowered by sect. 5, at its discretion, to inflict costs upon the making it.

Second appeal.

Second Appeals and Re-hearing.—Although an appellant may appeal either after the service of the order of removal, or after the actual removal, he cannot, after having appealed unsuccessfully against the order, afterwards appeal against the removal itself. In *Reg.* v. *Justices of Peterborough* (3 Bit. & Par. New Mag. Cas. 96), an order of removal had been served, and at the next practicable sessions the appellants appealed, when, upon an objection taken by the respondents that the appellants had not produced, or given notice to produce, the original order, the appeal was dismissed. The paupers were then removed, and the appellants gave fresh notice and grounds of appeal, but it being objected that the appellants had already appealed, and were not entitled to appeal again, the sessions dismissed the appeal, and the Court of Queen's Bench, on an application for a *mandamus*, held that they had done rightly.

Reg. v. *Peterborough*

But there must be a hearing of the appeal, and an adjudication, to make the previous order conclusive. Thus, where an appeal against an order of removal was entered before the actual removal, and the sessions had confirmed the order in these words, "Order confirmed, not on the merits, no due notice having been given," it was held that the parish upon

which the order was made was entitled to be heard in an appeal after the actual removal of the pauper, and that the previous order was not a decision on the merits, nor conclusive: (*Reg.* v. *Macclesfield*, 3 Bit. & Par. New Mag. Cas. 199.) THE APPEAL.

Practice of Sessions.—Each quarter sessions is empowered to make rules of practice for regulating the hearing of its own appeals; but this power does not extend to the creation of a condition distinct from, and in addition to, the steps required by the law, and by which the appeal is refused if such condition be not performed. Thus, by a rule of the Surrey Sessions, it was provided that, upon an appeal being respited, notice thereof should be given to the respondents. An appeal against an order of removal was entered and respited, and notice and grounds of appeal were served, but no mention was made in the notice of the appeal having been respited, and the sessions having refused to hear the appeal, on the ground that the above rule had not been complied with, the Court of Queen's Bench granted a *mandamus*: (*Reg.* v. *Justices of Surrey*, 3 Bit. & Par. New Mag. Cas. 159.) Practice of sessions. *Reg.* v. *Justices of Surrey.*

Where an order of removal was made before the passing of the stat. 9 & 10 Vict. c. 66, but the pauper had since become irremovable by reason of that statute, and there is an appeal on that ground, the proper course for the sessions to take is to confirm the order, but to make a special entry that since the order was made the pauper had become irremovable: (*Reg.* v. *Glossop*, 3 Bit. & Par. New Mag. Cas. 4.) *Reg.* v. *Glossop.*

Decision of Sessions how far final.—It is enacted by sect. 7, that the decision of the Court of Quarter Sessions shall be final in certain cases.

SEVENTH SECTION.

7. And be it enacted, that the decision of the court upon the hearing of any appeal against any order of removal, as well upon the sufficiency and effect of the statement of the grounds of removal and of appeal, and of the notice of chargeability, and of the copy or counterpart of the order of removal sent to the Decisions of courts upon hearing of appeals final

THE APPEAL. appellant parish, as upon the amending or refusing to amend the order of removal as aforesaid or the statement of grounds of removal or appeal, shall be final, and shall not be liable to be reviewed in any court, by means of a writ of *certiorari* or *mandamus*, or otherwise.

It will be observed that this section defines the cases in which the decision of the session is to be final, thus implying that *in all other cases* there will remain the same power of appeal to a superior court as hitherto has existed. The cases in which the decision is to be final are where it is pronounced upon.

The *sufficiency* and *effect* of the statement of the grounds of removal and of appeal.
The *sufficiency* and *effect* of the notice of chargeability.
The *sufficiency* and *effect* of the copy or counterpart of the order of removal sent to the appellant parish.
The amending or refusing to amend the order of removal.
The statement of grounds of removal or appeal.

All these are strictly matters of *form* and *upon them there is now no appeal from the decision of the sessions*, and, by thus specifying them, the dispute has been avoided as to what *is* a matter of form.

But, upon every other objection, whether upon the reception, or rejection, or sufficiency of the evidence, or upon any question of law, the court of quarter sessions may still grant a case, and a *mandamus* may still be had if they refuse to exercise their jurisdiction. But proceeding by *certiorari* is virtually abolished by this section, so far as it relates to the order of removal, because it could only be had for defects apparent upon the face of the order, and these would fall under the third of the above cases in which the decision of the sessions is declared to be final.

But, it is presumed, a *certiorari* may still be had upon a defective or informal *order of the sessions*.

It is also provided, by sect. 6, "that no objection on account of any omission or mistake in an order of removal brought up upon a return to a writ of *certiorari* shall be allowed unless such omission or mistake

shall have been specified in the rule for issuing such writ of *certiorari*." THE APPEAL.

Suspended Orders.—The 10th section provides for suspended orders, thus:—

TENTH SECTION.

10. And be it enacted, that all the provisions which relate to the sending and service of copies of orders of removal shall apply to such orders when suspended, and to all orders consequent upon such suspension, and to all copies of charges arising thereon, and demands of payment of such charges. Service of suspended orders of removal and orders consequent thereon.

The effect of this section is to extend to suspended orders all the same provisions for preventing formal objections as are enacted in the case of ordinary orders.

But it does not affect the 84th section of the Poor Law Amendment Act (4 & 5 Will. 4, c. 76), so that a suspended order must still be served within ten days after it is made, to entitle the removing parish to the costs of maintenance.

This Act incorporated with the Poor Law Amendment Act.—This is enacted by sect. 11 as follows:—

ELEVENTH SECTION.

11. And be it enacted, that the said act passed in the session of Parliament holden in the fourth and fifth years of His late Majesty King William the Fourth, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, and all acts to amend and extend the same, and the present act, shall (except so far as the provisions of any former act are altered, amended, or repealed by any subsequent act) be construed as one act. 4 & 5 Will. 4, c. 76, and al acts amending the same to be construed with this act.

Pauper Lunatics.—The effect of this section is to incorporate this act, not only with the Poor Law As to removal of pauper lunatics.

PAUPER LUNATICS.

Amendment Act, but with all acts amending and extending it, and consequently with the Pauper Lunatic Act, 8 & 9 Vict. c. 126, s. 62, which provides that "the guardians of any union or parish, or the overseers of any parish, township, or place affected by such order, may appeal against the same in like manner as if the same were a warrant of removal . . . and the persons appealing or intending to appeal, and the persons defending such appeal, shall have all the same powers, rights, and privileges, and be subject to the same obligations in all respects as in the case of an appeal against a warrant of removal." And this, in *Reg.* v *Middlesex* (2 Bit. & Par. New Mag. Cas. 203), was held to mean that the same forms were to be observed as are required by the Poor Law Amendment Act, and, therefore, it is presumed that the forms under the Pauper Lunatics Act will follow the alterations now made in the forms under the former statute.

Reg. v. *Middlesex.*

We add the views of Mr. BITTLESTON, one of the Editors of "*The Magistrate*," as to the effect of the new statute upon orders relating to lunatic paupers under 8 & 9 Vict. c. 126, s. 62.

Effect of statute on removal of lunatics

"Its operation dates from the 1st of August; and from that day parish officers, who have obtained an order of removal, are relieved from the necessity of sending to the parish to which the pauper is removed, any copy of the examinations upon which the order has been obtained; but some doubts will arise as to the application of the statute to orders which have been served with a copy of the examinations before the act. Will it apply to the case of an appeal against an order made and served before the 1st of August, but in which no notice of appeal was given until after that day? Will it apply to appeals where the notice of appeal was given before the 1st of August, but not the grounds? Will it apply when all the proceedings have taken place except the trial of the appeal? Upon a careful consideration of the statute we have come to the conclusion that it cannot affect the procedure upon appeal against any order served before the 1st of August, and accompanied with a copy of the examinations in obedience to the 79th section of 4 & 5 Will. 4, c. 76. Until the 1st of August that 79th section remained in force; and according to the judicial construction of that section, it required that the order should be accompanied with a copy of the

examinations strictly formal in every respect; after the 1st of August a statement of the grounds of removal is substituted for the copy of the examinations, and that statement is to be amendable by the sessions, if it should not be sufficient to enable the party receiving it to inquire into it and prepare for trial; but the act throughout contains no provision by which any less degree of accuracy is required in any copies of examination, which may have been sent, nor is any power to amend any such copies given to the court of quarter sessions. On the contrary the section which gives the power of amendment, the 4th section, refers throughout to the statement of the grounds of removal substituted by the 2nd section for the copy of the examinations. It is true that power is given to amend the grounds of appeal, and that they existed before this act; but it can hardly be contended that the power of amendment may be exercised by the sessions in favour of one party to an appeal and not in favour of the other. Moreover the right of appeal attaches as soon as the order is served. We therefore conclude that, as to the main provisions of this statute, they will apply only in cases where the order is served after the 1st of August, and accompanied with the statement of the grounds of removal required by the 2nd section. The rights of parties prior to the 1st of August are not interfered with, and if a parish had, on the 1st of August, a good ground of appeal against an order on account of a defect in the copy of the examination sent, in our opinion that ground of appeal is still good. Upon this point the following cases may be consulted: *Gilmor* v. *Shuter*, 2 Mod. 310; *Couch* v. *Jeffries*, 4 Burr. 2460; *Fowler* v. *Chatterton*, 6 Bing. 258; *Hodgkinson* v. *Wyatt*, 4 Q. B. 739; *Binns* v. *Hay*, 1 D. & L. 661; *Thompson* v. *Lack*, 16 L. J. 75, C. P.; *Ashburnham* v. *Bradshaw*, 2 Atk. 56; *Att.-General* v. *Panter*, 6 Bro. P. C. 553; *Att.-General* v. *Lloyd*, 3 Atk. 551.

"Another important question arises upon this statute, viz., whether it affects the procedure in respect of orders touching the settlement and maintenance of lunatic paupers under 8 & 9 Vict. c. 126, s. 62. That section gives an appeal against any such order, 'in like manner as if the same were a warrant of removal, and the persons appealing or intending to appeal, and the persons defending such appeal, shall

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have all the same powers, rights, and privileges, and be subject to the same obligations in all respects as in the case of an appeal against a warrant of removal;' and it seems to us that these words are sufficiently large to incorporate into that act so much of the present act as may be applicable thereto. In *R.* v. *The Justices of the West Riding*, 2 Bit. & Par. New Mag. Cas. 210; 16 L. J. 171, M. C., it was certainly held that the words of the appeal clause in the prior statute (9 Geo. 4, c. 40, s. 54), had not the effect of incorporating into that act the 79th sect. of the Poor Law Amendment Act; but the words were different; for the appeal was given by 9 Geo. 4, 'in like manner and under like restrictions and regulations as against any order of removal;' which appeal the justices were authorized to hear and determine 'in the same manner as appeals against orders of removal are *now* heard and determined;' and the main ground of the judgment in the case cited was, that the orders adjudicating on the settlement of lunatic paupers were not within the mischief contemplated by the 79th section; which certainly cannot be said with reference to the present act. The intention of the Legislature to place these lunatic orders on the same footing as orders of removal 'in all respects,' is manifest from the language of the 62nd section above quoted; and the mischief recited in the present act, the difficulty of obtaining a decision on the merits, is as notorious, in regard to these lunatic orders, as it is with reference to those to which the act expressly applies."

TWELFTH SECTION.

Commencement of act.

12. And be it enacted, that this act shall commence and take effect on the first day of August one thousand eight hundred and forty-eight.

When to take effect.—The act came into operation on August, 1, 1848.

Operation of act on existing orders.

Operation of the Act on existing Orders.—There remains for consideration one very important question; what is the operation of the act upon existing orders?

The act making no exceptions, it must be understood to apply to cases to which it is *capable of being applied* at the moment at which it came into operation.

Operation of statute.

All statutes operate immediately upon all matters to which they are applicable, unless otherwise expressly declared. Adopting this rule, we find,

That the provision of the Poor Law Amendment Act for the transmission of a copy of the examination *is* repealed (sect. 1), and consequently that, instead of it, the order must now be accompanied with a statement of grounds of removal: (sect. 2.)

So, the clerk must now furnish copies of the depositions upon which such order was obtained: (sect. 3.)

So, at the hearing of *any* appeal, formal objections are not to be taken, and the court may amend (sect. 4), and inflict costs for frivolous and vexatious grounds (sect. 5), and amend an order of removal on account of omission or mistake (sect. 6.) And so may the court above, upon the return to a writ of *certiorari*: (sect. 6.)

But there is a difficulty in the latter part of this section, which provides "that no objection on account of any omission or mistake in an order of removal brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such writ of *certiorari*." In the case of a rule already granted, but the return not yet made, it would appear that, inasmuch as the rule did not specify the omission or mistake in the order, no objection could now be made on such account.

Interpretation.

Interpretation.—As this statute is incorporated with the Poor Law Amendment Act, the interpretation clause of that statute is applicable to this. The terms here used are *there* thus defined—

"The word '*guardian*' shall be construed to mean and include any visitor, governor, director, manager, acting guardian, vestryman, or other officer in a parish or union, appointed or entitled to act as a manager of the poor, and in the distribution or ordering of the relief to the poor from the poor-rate, under any general or local act of Parliament: the words '*justice or justices of the peace*,' shall be construed to include justices of the peace of any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate, unless where otherwise provided by this act: the word '*overseer*' shall

OPERATION OF STATUTE.

be construed to mean and include overseers of the poor, churchwardens, so far as they are authorized or required by law to act in the management or relief of the poor, or in the collection or distribution of the poor rate, assistant overseer, or any other subordinate officer, whether paid or unpaid, in any parish or union, who shall be employed therein in carrying this act, or the laws for the relief of the poor into execution: the word '*parish*' shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place or division, or district of a place maintaining its own poor, whether parochial or extra-parochial.

"And wherever in this act, in describing any person or party, matter or thing, the word importing the *singular* number or the *masculine* gender only is used, the same shall be understood to include and shall be applied to *several* persons or parties as well as *one* person or party, and *females* as well as *males*, and several matters or things as well as one matter or thing respectively, unless there be something in the subject or context repugnant to such construction."

For further interpretations see *ante*, p. 26.

In the case of *R.* v. *Justices of Cambridgeshire* (7 A. & E. 491), Lord DENMAN, C. J. says "But we apprehend that an interpretation clause is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances; we rather think that it declares what persons may be comprehended within that term when the circumstances require that they should."

THE STATUTES.

9 & 10 Vict. c. 66.

An Act to amend the Laws relating to the Removal of the Poor.

Sect. 1. Whereas it is expedient that the laws relating to the removal of the poor should be amended: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act no person shall be removed, nor shall any warrant be granted for the removal of any person, from any parish in which such person shall have resided for five years next before the application for the warrant: provided always, that the time during which such person shall be a prisoner in a prison, or shall be serving Her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or shall be confined in a lunatic asylum, or house duly licensed or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person shall receive relief from

No person to be removed from any parish in which he or she shall have resided for five years

Time during which persons are serving in the army or navy, &c. not to be computed as time of residence.

9 & 10 Vict. c. 66.

any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, shall for all purposes be excluded in the computation of time hereinbefore mentioned, and that the removal of a pauper lunatic to a lunatic asylum, under the provisions of any act relating to the maintenance and care of pauper lunatics, shall not be deemed a removal within the meaning of this act: provided always, that whenever any person shall have a wife or children having no other settlement than his or her own, such wife and children shall be removable whenever he or she is removable, and shall not be removable when he or she is not removable.

No widow liable to be removed for twelve months after death of husband.

Sect. 2. And be it enacted, that no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish, for twelve calendar months next after his death, if she so long continue a widow.

No child under sixteen years of age liable to be removed.

Sect. 3. And be it enacted, that no child under the age of sixteen years, whether legitimate or illegitimate, residing in any parish with his or her father or mother, step-father or step-mother, or reputed father, shall be removed, nor shall any warrant be granted for the removal of such child, from such parish, in any case where such father, mother, step-father, step-mother, or reputed father may not lawfully be removed from such parish.

Sick persons not liable to be removed except under certain circumstances.

Sect. 4. And be it enacted, that no warrant shall be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness or accident, unless the justices granting the warrant shall state in such warrant that they are satisfied that the sickness or accident will produce permanent disability.

9 & 10 Vict. c. 66.

Settlement not to be gained by not being removed.

Sect. 5. Provided always, and be it enacted, that no person hereby exempted from liability to be removed shall by reason of such exemption acquire any settlement in any parish.

Penalty on persons unlawfully procuring removals of poor persons.

Sect. 6. And be it enacted, that if any officer of any parish or union do, contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable, convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed, or give directly or indirectly any money, relief, or assistance, or afford or procure to be afforded any facility for such conveyance, or make any offer or promise or use any threat to induce any poor person to depart from such parish, and if, in consequence of such conveyance or departure, any poor person become chargeable to any parish to which he was not then chargeable, such officer, on conviction thereof before any two justices, shall forfeit and pay for every such offence any sum not exceeding five pounds nor less than forty shillings.

Delivery of paupers under orders of removal.

Sect. 7. And be it enacted, that the delivery of any pauper under any warrant of removal directed to the overseers of any parish at the workhouse of such parish, or of any union to which such parish belongs to any officer of such workhouse, shall be deemed the delivery of such pauper to the overseers of such parish.

4 & 5 Will. 4, c. 76, and this act to be construed as one.

Sect. 8. And be it enacted, that an act passed in the fifth year of the reign of King William the Fourth, for the amendment and better administration of the laws relating to the poor in England and Wales, and all acts to amend and extend the same, and the present act, except so far as the provisions of any former act are altered, amended, or repealed by any subsequent act, shall be construed as one act; and all

9 & 10 Vict. c. 66. penalties and forfeitures imposed under this act shall be recoverable as penalties and forfeitures under the said act for the amendment of the laws relating to the poor.

Act limited to England. Sect. 9. And be it enacted, that this act shall extend only to England.

Act may be amended, &c. Sect. 10. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

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11 & 12 Vict. c. 31.

An Act to amend the Procedure in respect of Orders for the Removal of the Poor in England and Wales, and Appeals therefrom.—[22*nd July*, 1848.]

Sect. 1. Whereas the communication now by law required to be made, by the overseers or guardians of any parish seeking to enforce an order for the removal of a poor person to the overseers or guardians of the parish to which such poor person is intended to be removed, of a copy of the examination upon which such order has been made, has been found to produce much expensive and useless litigation upon points of mere form, so that few cases of appeals against such orders are now decided upon the merits: for remedy thereof be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of an act passed in the session of Parliament holden in the fourth and fifth

So much of 4 & 5 Will. 4, c. 76, as

years of the reign of His late Majesty King William the Fourth, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, as provides in cases of orders of removal, that the notice thereby required to be sent by the overseers or guardians of the parish obtaining the order shall be accompanied by a copy of the examination upon which such order was made, shall be and the same is hereby repealed.

11 & 12 Vict. c. 31. § provides that certain notices shall be accompanied by a copy of examination, &c. repealed.

Sect. 2. And be it enacted, that instead thereof such notice shall be accompanied by a statement in writing under the hands of such overseers or such guardians, or any three or more of such guardians, setting forth the grounds of such removal, including the particulars of the settlement or settlements relied upon in support thereof: provided always, that on the hearing of any appeal against any order of removal it shall not be lawful for the respondents to go into or give evidence of any other grounds of removal than those set forth in such statement.

Such notice to be accompanied by a statement of grounds of removal instead of copy of examination.

Sect. 3. And be it enacted, that the clerk to the justices who shall make any order of removal shall keep the depositions upon which such order was made and shall within seven days furnish a copy of such depositions to the overseers or guardians as aforesaid of the parish to which the removal is by such order directed to be made, if such overseers or such guardians shall apply for such copy, and pay for the same at the rate of twopence for every folio of seventy-two words; provided that no omission or delay in furnishing such copy of the depositions shall be deemed or construed to be any ground of appeal against the order of removal; provided also, that on the trial of any appeal against an order of removal no such order shall be quashed or set aside, either wholly or in part,

Copy of depositions to be furnished on application.

11 & 12 Vict. c. 31.

on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises, an objection to the order or grounds of removal.

As to the sufficiency of statement of grounds of removal or appeal.

Sect. 4. And whereas a statement of the grounds of removal or of appeal is required to be communicated for the purpose of enabling the party receiving it to inquire into the subject of such statement, and, if need be, to prepare for trial; be it therefore enacted, that upon the hearing of any appeal against an order of removal no objection whatever on account of any defect in the form of setting forth any ground of removal or of appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of a ground of removal or appeal alleged to be set forth in any such statement shall prevail, unless the court shall be of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: provided always, that in all cases where the court shall be of opinion that any such objection to such statement or to the reception of evidence ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such statement of grounds of removal or appeal to be forthwith amended by some officer of the court or otherwise, on such terms as to payment of costs by the other party, or postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable.

Power to amend statement of grounds of removal or appeal.

Party making frivolous or vexatious statement of grounds of removal or

Sect. 5. And be it enacted, that if either of the parties to the said appeal shall have included in the statement of grounds of removal or of appeal sent to the opposite party any ground or grounds of removal

or of appeal which shall, in the opinion of the court determining the appeal, be frivolous and vexatious, such party shall be liable, at the discretion of the said court, to pay the whole or any part of the costs incurred by the other party in disputing any such ground or grounds, such costs to be recovered in the same manner as any penalties or forfeitures are recoverable under the said act passed in the session of Parliament holden in the fourth and fifth years of the reign of His late Majesty King William the Fourth.

Appeal liable to pay costs.

Sect. 6. And be it enacted, that if upon the trial of any appeal against an order of removal, or upon the return to a writ of *certiorari*, any objection shall be made on account of any omission or mistake in the drawing up of such order, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the magistrates making such order to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order of removal, and to give judgment as if no such omission or mistake had existed: provided always, that no objection on account of any omission or mistake in an order of removal brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such writ of *certiorari*.

Power for court to amend order of removal on account of omission or mistake.

Proviso.

Sect. 7. And be it enacted, that the decision of the court upon the hearing of any appeal against any order of removal, as well upon the sufficiency and effect of the statement of the grounds of removal and of appeal, and of the notice of chargeability and of the copy or counterpart of the order of removal sent to the appellant parish, as upon the amending or refusing to amend the order of removal as aforesaid or the statement of

Decisions of courts upon hearing of appeals final.

11 & 12 Vict. c. 31.

grounds of removal or appeal, shall be final, and shall not be liable to be reviewed in any court, by means of a writ of *certiorari* or *mandamus*, or otherwise.

Abandonment of orders of removal.

Sect. 8. And be it enacted, that in any case in which an order shall have been made for the removal of any poor person, and a copy or counterpart thereof sent as by law required, it shall and may be lawful for the overseers or guardians of the parish who shall have obtained such order of removal, whether any notice of appeal against such order shall or shall not have been given, and whether any appeal shall have been entered or not, to abandon such order by notice in writing under the hands of such overseers or guardians, or any three or more of such guardians, to be sent by post or delivered to the overseers or guardians as aforesaid of the parish to which such person is by the said order directed to be removed; and thereupon the said order, and all proceedings consequent thereon, shall become and be null and void to all intents and purposes as if the same had not been made, and shall not be in any way given in evidence in case any other order of removal of the same person shall be obtained: provided always, that in all cases of such abandonment the overseers or guardians of the parish so abandoning shall pay to the overseers or guardians of the parish to which such person is by the said order directed to be removed the costs which the said last-mentioned overseers or guardians shall have incurred by reason of such order, and of all subsequent proceedings thereon, which costs the proper officer of the court before whom any such appeal (if it had not been abandoned) might have been brought shall and he is hereby required, upon application, to tax and ascertain at any time, whether the court shall be sitting or not, upon production to him of such notice of abandonment, and upon proof to him that such reasonable notice of taxation, together

As to payment of costs on abandonment.

with a copy of the bill of costs, has been given to the overseers or guardians abandoning such order as the distance between the parishes shall in his judgment require, and thereupon the sum allowed for costs including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be indorsed upon the said notice of abandonment, and the said notice so indorsed shall be filed among the records of the said court; and if the said costs so allowed be not paid within ten days after such costs shall have been lawfully demanded the amount thereof may be recovered from such last-mentioned overseers or guardians in the same manner as any penalties or forfeitures are recoverable under the said act passed in the session of Parliament holden in the fourth and fifth years of the reign of King William the Fourth.

No appeal if notice be not given within a certain time after notice of chargeability.

Sect. 9. And be it enacted, that no appeal shall be allowed against any order of removal if notice of such appeal be not given as required by law within the space of twenty-one days after the notice of chargeability and statement of the grounds of removal shall have been sent by the overseers or guardians of the removing parish to the overseers or guardians of the parish to which such order shall be directed, unless within such period of twenty-one days a copy of the depositions shall have been applied for as aforesaid by the last-mentioned overseers or guardians, in which case a further period of fourteen days after the sending of such copy shall be allowed for the giving of such notice of appeal; but in such case no poor person shall be removed under such order of removal until the expiration of such further period of fourteen days.

Service of suspended orders of removal and orders

Sect. 10. And be it enacted, that all the provisions which relate to the sending and service of copies of orders of removal shall apply to such orders when

11 & 12 Vict. c. 31. consequent thereon.

suspended, and to all orders consequent upon such suspension, and to all copies of charges arising thereon, and demands of payment of such charges.

4 & 5 Will. 4, c. 76, and all acts amending the same, to be construed with this act.

Sect. 11. And be it enacted, that the said act passed in the session of Parliament holden in the fourth and fifth years of the reign of His late Majesty King William the Fourth, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, and all acts to amend and extend the same, and the present act, shall (except so far as the provisions of any former act are altered, amended, or repealed by any subsequent act,) be construed as one act.

Commencement of act.

Sect. 12. And be it enacted, that this act shall commence and take effect on the first day of August, one thousand eight hundred and forty-eight.

Act may be amended, &c.

Sect. 13. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament.

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11 & 12 Vict. c. 110.

An Act to alter the Provisions relating to the Charges for the Relief of the Poor in Unions.—[*4th September*, 1848.]

Paupers rendered irremovable by the 9 & 10 Vict. c. 66, rendered chargeable to the common

Sect. 3. And be it enacted, that after the thirtieth day of September next until the thirtieth day of September in the year one thousand eight hundred and forty-nine all the costs incurred in the relief, as well medical as otherwise, of any poor person, who, not being settled in the parish where he resides, shall, by

reason of some provision of the act passed in the tenth year of the reign of Her Majesty, intituled *An Act to amend the Laws relating to the Removal of the Poor*, be or become exempted from the liability to be removed from the parish where he resides, shall, where the said parish shall be comprised in any such union as aforesaid, be charged to the common fund of such union, so long as such person shall continue to be so exempted; and the expenses of the burial of any such person so exempted at the time of his death shall, if legally payable by the guardians of the union, likewise be charged to the said common fund.

11 & 12 Vict c. 110. — fund of the union.

Sect. 4. And be it enacted, that where in any such union a question shall arise between any parishes therein, or between the guardians and any parish or parishes therein, with reference to the charging of the cost of his relief, as to whether any pauper be so exempted as aforesaid, the parties may jointly submit such question to the commissioners for administering the laws for the relief of the poor in England, who may thereupon, if they think proper, entertain such question, and by an order under their seal determine the same; but no such order shall be liable to be removed, by writ of *certiorari* or otherwise, into the Court of Queen's Bench, after the expiration of the term next ensuing the time when the copy thereof shall have been sent to the guardians, nor shall the same be quashed for any defect of form therein; and every such order not rescinded or quashed shall be in all courts and for all purposes final and conclusive between the guardians and every parish in the union interested in the matter.

Questions arising as to cost of relief, &c., may be referred to and decided by the poor law board;

whose orders shall not be removable after a certain time, nor be quashed for want of form.

Sect. 11. And be it enacted, that in any court and before any justice or justices, and for all purposes, a certificate of the chargeability of any person named therein in the form prescribed in the schedule marked

Certificate of chargeability in form prescribed in schedule to 7 & 8 Vict. c. 101,

11 & 12 Vict. c. 111.

deemed sufficient evidence.

(C.) to the act of the eighth year of the reign of Her present Majesty for the amendment of the laws for relief of the poor in England, and purporting to have been executed in the manner prescribed by that act, shall be received within the space of twenty-one days from the date thereof as sufficient evidence of the chargeability of the person named therein unless the contrary be otherwise shown.

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11 & 12 Vict. c. 111.

An Act to amend an Act of the Tenth Year of Her present Majesty, for amending the Laws relating to the Removal of the Poor.—[*4th September*, 1848.]

9 & 10 Vict. c. 66.

Sect. 1. Whereas by an act passed in the tenth year of the reign of Her Majesty, intituled *An Act to amend the Laws relating to the Removal of the Poor*, after reciting that it was expedient that the laws relating to the removal of the poor should be amended, it was enacted, that from and after the passing of that act no person should be removed nor should any warrant be granted for the removal of any person from any parish in which such person should have resided for five years next before the application for the warrant: provided always, that the time during which such person should be a prisoner in a prison, or should be serving Her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or should be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in an hospital, or during which any such person should receive relief

from any parish, or should be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, should for all purposes be excluded in the computation of time therein-before mentioned, and that the removal of a pauper lunatic to a lunatic asylum under the provisions of any act relating to the maintenance and care of pauper lunatics should not be deemed a removal within the meaning of that act: provided always, that whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable whenever he or she is removable, and should not be removable when he or she is not removable: And whereas by reason of the generality of the expressions used in the last proviso doubts are entertained as to the meaning thereof, and it is desirable to remove such doubts: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said last proviso be repealed, and that instead thereof the following be enacted: provided always, that whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable, notwithstanding any provisions of the said recited act, and should not be removable from any parish or place from which he or she would not be removable by reason of any provision in the said recited act.

Repealing proviso in 9 & 10 Vict. c. 66, in relation to removal of wives and children, and substituting another proviso in lieu thereof.

Sect. 2. And be it enacted, that nothing herein contained shall affect any appeal of which notice shall have been given before the passing of this act.

Not to affect appeals of which notice has been given.

12 & 13 Vict. c. 103.

An Act to continue an Act of the last Session of Parliament for charging the Maintenance of certain Poor Persons in Unions upon the Common Fund; and to make certain Amendments in the Laws for the Relief of the Poor.—[*August 1st*, 1849.]

11 & 12 Vict. c. 110.

Sect. 1. Whereas by an act passed in the twelfth year of the reign of Her present Majesty, intituled *An Act to alter the Provisions relating to the Charges for the Relief of the Poor in Unions*, provisions were made whereby the costs of the relief and the expenses of the burial of certain poor persons therein described are made chargeable upon the common fund of the union until the thirtieth day of September in the present year; and it is expedient that such term should be extended, and that various amendments should be made in the laws relating to the relief of the poor: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the provisions in the said act regarding the charge of such costs and expenses upon the common fund, which provisions would, unless continued by Parliament, expire on the thirtieth day of September next, shall be continued in full force until the thirtieth day of September one thousand eight hundred and fifty, and to the end of the then next session of Parliament.

Certain provisions of 11 & 12 Vict. c. 110, continued for a limited time.

Removal of a lunatic to an asylum or of a pauper to a workhouse of the union not to be

Sect. 4. That the removal of any lunatic pauper to an asylum, licensed house, or registered hospital, under the authority of the statutes in that behalf, or of any pauper, otherwise than under an order of removal, from his place of abode in any parish of a

union to the workhouse of such union, shall not be deemed to be an interruption of the residence of such pauper within the meaning of the statute of the tenth year of the reign of Her Majesty, intituled *An Act to amend the Laws relating to the Removal of the Poor*, but the time spent in such lunatic asylum, licensed house, or registered hospital or workhouse respectively, and the time during which any person shall be relieved at the charge of the common fund of the union, shall be wholly excluded from the computation of the time of residence which, according to the provisions of such statute, will exempt the poor person from being removed.

12 & 13 Vict. c. 103.
deemed an interruption of the residence under 9 & 10 Vict. c. 66, but the time to be excluded from computation.

Sect. 5. That all the costs and expenses incurred, or hereafter to be incurred, since the twenty-fifth day of March last in and about the obtaining any order of justices for the removal and maintenance of a lunatic pauper who shall have been or shall be removed under any such order to any asylum, licensed house, or registered hospital, and who, if not a lunatic would have been exempt from removal by reason of some provision in the said last-recited act of the tenth year of the reign of Her Majesty, shall, until the time when the provisions hereinbefore contained shall cease, be borne by the common fund of the union comprising the parish wherein such pauper lunatic was resident at the time when such lunatic pauper was so removed to such asylum, licensed house, or registered hospital, notwithstanding the order for the payment thereof shall have been made upon the overseers of such parish, or the parish of the settlement, or upon the treasurer or guardians of the union in which either parish shall be comprised.

The costs of lunatic poor, being irremovable, to be borne by the common fund.

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